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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12140

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. ETC. (I.G. CHEMIE), *Appellant*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN; AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES, *Appellees*

Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

Volume I

(Pages 1 to 519)

Pertinent Civil Docket Entries.

[All the docket entries appear in the MSS record at R. 3552-3587. The pertinent civil docket entries are as follows:]

In re Petition of Toin C. Clark to Perpetuate the Testimony of Alfred E. Merton, No. 4157-47. [Consolidated, by order dated March 8, 1950, with the instant case.]

1947

Oct.	13	Complaint, appearance, notice, P. & A.
Oct.	13	Certified copies (2) issued to attorneys for plaintiff for service by registered mail.
Nov.	12	Affidavit of H. J. Dant, re: mailing.
Nov.	21	Affidavit; cert. of service.
Nov.	24	Affidavit (2) of David Schwartz as to service.
Nov.	24	Order of publication (2 copies), Laws, C. J. (N).
Dec.	11	Affidavit of H. J. Dant.
Dec.	19	Proof of publication; W. L. R. ($23.04), Wash. Post ($29.70).
Dec.	23	Transcript of proceedings, Vol. #1, pp. 1-17.

1948

Jan.	19	Affidavit of Leon Yudkin as to mailing.
Mar.	11	Memo of I. G. Chemie, respondent, in opposition to petition to perpetuate testimony of Alfred C. Merton; cert. of service; appearance J. J. Wilson; M. C. 3-11-48.
Mar.	23	Reply memorandum in support of petition.
Mar.	23	Transcript of testimony.
Apr.	21	Order granting leave to take the deposition of Alfred E. Merton upon oral examination. Letts, J.
Apr.	30	Notice of taking of deposition of Alfred E. Merton; aek. of service.
May	3	Stipulation between counsel that deposition upon oral examination of Alfred E. Merton be taken 5-26-48 instead of 5-24-48.
Dec.	3	Notice of petitioner of the filing of deposition of Alfred E. Merton; cert. of mailing.

In re Petition of Tom C. Clark to Perpetuate the Testimony of Rudolf Euler, No. 2761-48. [Consolidated, by order dated March 8, 1950, with the instant case.]

1948

July 6 Complaint, Appearance, Notice, P. & A., Served 7-7-48.
July 8 Affidavit of H. J. Daut as to mailing.
July 14 Affidavit of Sidney B. Jacoby; affidavit of mailing.
July 14 Stipulation between parties re: Proposed order.
July 15 Order allowing notice of petition to be served by mail, etc. Goldsborough, J.
July 22 Affidavit of H. J. Dant of mailing; Notice.
Aug. 3 Order granting leave to take deposition of Rudolf Euler upon oral examination, etc. Curran, J.
Nov. 30 Deposition of Rudolf Euler, Exhibits (57), published and filed.
Dec. 3 Notice of filing of deposition of Rudolf Euler; cert. of mailing.

Societe Internationale, Etc. v. J. Howard McGrath, Attorney General of the United States, et al., No. 4360-48; Return of Seized Property.

1948

Oct. 21 Complaint, appearance.
Oct. 21 Summons, copies (2) and copies (2) of Complaint issued. Served "both" 10-21-48.
Nov. 5 Motion of pltff. that depositions shall not be taken, or that they shall be taken in Basle, Switzerland, & that Court shall fix time, service by mail 11-4-48, memo in support, M. & 11-5-48.
Nov. 8 Supplementary memo of pltff. in support of motion that depositions not be taken, etc., service 11-5-48. Exhibits (2).
Nov. 15 Notice by defts. of taking deposition of pltff., service ack. 10-27-48; app. David L. Bazelon, & David Schwartz.

1948

Nov. 15 P. & A. of defts. in opposition to motion that depositions shall not be taken, etc., affidavit with attachments (9); & affidavit.

Nov. 15 Acknowledgment of service of certain papers by atty. for pltff.

Dec. 2 Supplemental P. & A.'s of defts. in opposition to motion that deposition shall not be taken. Personally served 12-1-48.

Dec. 2 Supplemental affidavit of David Schwartz in opposition to motion that depositions shall not be taken, etc. Served personally 12-1-48. Exhibits (2).

Dec. 2 Memo of pltff. commenting upon portions of Schwartz affidavits (2) and exhibit.

Dec. 2 Reply memo of pltff. in regard to its motion that depositions shall not be taken.

Dec. 8 Transcript of Proceedings; Dec. 3, 1948, pp. 1-82.

Dec. 15 Stipulation extending time until February 18, 1949, for defts. to answer complaint approved (fiat).

Dec. 24 Memo denying pltff.'s motion that depositions shall not be taken or that they shall be taken in Basle, Switzerland Laws, C. J. (N).

1949

Jan. 5 Order that the motion of the pltff. that depositions of the pltff. corp., etc. shall not be taken, or in the alternative they shall be taken in Basle, Switzerland, is denied. Laws, C. J.

Jan. 10 Motion of plaintiff for discovery and production of documents in possession of deft. Clark; mailed 1-8-49, memo, M. C.

Jan. 18 Motion of defts. for designation of Judge to hear and superintend all matters in this case preliminary to trial, ack. of service 1-18-49, M. C. 1-18-49.

Jan. 18 Memo in support of defts. motion and in opposition to motion of pltff. for discovery, etc., served personally 1-18-49, exhibits (2), affidavit, exhibits A, B, C, and D.

1949

Jan. 25 Supplemental memo in support of pltff.'s motion under F. R. C. P. 34 and in opposition to deft.'s motion, P. & A., and ack.

Feb. 18 Supplemental memo in support of deft.'s motions, ack. of service 2/17/49.

Feb. 18 Order extending time of deft. to file answer to complaint until 2/5/49. Pine, J. (N).

Feb. 24 Motion of defts. under Rule 37(a) for order compelling answer to questions, ack. of service 2/24/49, P. & A., affidavit M. C. 2/25/49.

Feb. 25 Depositions of H. Sturzenegger, Vols. I to XII, inclusive.

Feb. 28 Stipulation extending time of defts. to file answer until 3/4/49, (fiat) Pine, J. (N).

Mar. 2 Memo of pltff. in opposition to defts. motion under Rule 37(a) to compel answer to question, mailed 3/2/49.

Mar. 4 Answer of defts. to complaint and counterclaim, ack. of service by pltff's. attorney 3/4/49. Exhibits A, B, C, D, E, F, G, H, I.

Mar. 17 Reply memo of deft. in support of motion for order compelling deponent to ans. questions; ack. of service 3-16-49.

Mar. 17 Supplemental memo in support of deft's. motion for production and ack., 3/17/49.

Mar. 24 Stipulation and order extending the time of pltff. to file reply to counterclaim until 4/13/49. Pine, J. (N).

Apr. 1 Pltff's. cable in opposition to deft's. motion for discovery.

Apr. 1 Partnership Contract #A, Translation, Supply agreement #B, Translation (Resolution of Partners) (2nd copy of Supply. Agreement #D, Translation, Supply. Agreement).

Apr. 5 Certified Record of Court Reporter, Vol. 1, pag. 1-48 (Feb. 18, 1949).

Apr. 7 (4-6-49) Order granting leave to pltff. to make certain documents and papers part of the record in opposition to defts's. motion for discovery.

Apr.	8	Affidavit and 5 documents pertaining to order of 4/6/49.
Apr.	12	Memo of pltff. for Chief Judge Laws re: Motions for discovery; cert. of service 4-8-49.
Apr.	12	Supplemental memo of pltff. for Chief Judge Laws Re: Motion for discovery; cert. of service; 4-12-49.
Apr.	14	Stipulation extending time of pltff? to file reply to counterclaim until May 3, 1949 (fiat). McGuire, J. (N).
Apr.	14	Stipulation as to production of documents.
May	4	Stipulation extending time of the pltff. to file reply to the counterclaim until May 16, 1949 (Fiat). McGuire, J. (N).
May	10	Answer of pltff. to counterclaim; mailed 5/10/49.
June	23	Memorandum opinion. Laws, C. J.
July	5	Order granting respective motions of P & D to inspect, copy, and photograph documents and denying deft's. motion that a judge of this court be appointed to hear all preliminary motions. Laws, C. J. (N).
July	5	Certified Record of Court Reporter Vol. I; pg. 1-86.
July	19	Suggestion of death of deft. William A. Julian and appointment and qualification of his successor.
July	19	Order substituting Georgia Neese Clark, Treasurer of the U. S., in place of William A. Julian, deceased, as a party deft. Schweinhaut, J. (N).
Sept.	16	Suggestion of resignation of Deft. Tom C. Clark and appointment of successor.
Sept.	19	Order substituting J. Howard McGrath, Attorney General of the United States, as party deft. in place of Tom C. Clark, resigned, etc. Goldsborough, J. (N).
Nov.	1	Motion of defts. for order compelling deponents to answer—argued and granted; ordered to be presented. Bailey, J.
Nov.	3	Motion of defts. for leave to file supplemental answer; per. served 11-3-49; P & A; exhibit; M. C. 11-3-49.

1949

Nov. 7. Cross motion of defts. under Rule 37(d) for dismissal of pltff's complt. with prejudice, etc.; memo and affidavit in support and also in opposition to pltff's motion for postponement of deposition.

Nov. 7 Motion of pltff. for postponement of deposition; exhibits (2); mailed 11-7-49.

Nov. 7 Order to answer specified question propounded by defts. upon oral examination. Bailey, J. (N).

Nov. 8 Memo of pltff. in opposition to motion for leave to file a supplemental answer; mailed 11-8-49.

Nov. 8 Memo of intervenor in opposition to motion of defts. to dismiss complt.; mailed 11-8-49.

Nov. 9 Affidavit of Walter Germann in support of motion of pltff. for postponement of deposition.

Nov. 9 Affidavit of Olga Hoffman; exhibit.

Nov. 9 Affidavit of Stephen W. Ranson for defts.

Nov. 9 Radiogram signed "Dr. Markwalder" filed by pltff.

Nov. 18 11-17-49 Exhibits on behalf of deft.

Nov. 18 11-17-49 Exhibits on behalf of pltff.

Nov. 22 Supplemental memo of defts. in support of memo for leave to file a supplemental answer; served 11-22-49; exhibits (5).

Nov. 23 Exhibit of pltff.

Nov. 23 Exhibit of deft.

Dec. 2 Order denying cross-motion of defts. under Rule 37 for dismissal of complt. Morris, J. (N).

Dec. 2 Order postponing the taking of Starzenegger deposition to January 9, 1950. Morris, J. (N).

Dec. 2 Exhibits of deft.

Dec. 21 Motion of defts. for leave to file a supplemental answer consisting of additional counterclaims; served 11-3-49; P & A's.

Dec. 21 Supplemental answer containing four additional counterclaims.

1950

Jan. 5 Appearance of David L. Bazelon withdrawn.

Jan. 5 Appearance of Harold L. Baynton for deft.

Jan. 5 Certified record of official court reporter, vol. 1, pp. 1-73; 74-88, Nov. 9 and 17, 1949; Nov. 21, 1949.

Jan.	5	Motion of pltff. for order for protection of pltff. in relation to deft's. contemplated deposition of Jos. Schmitz; notice.
Jan.	5	Affidavit of deft. with respect to pltff's. motion for order under Rule 30(b); exhibits "A", "B", "C", "D", "E".
Jan.	6	Order denying motion of pltff. for an order under Rule 30(b). Pine, J. (N).
Jan.	9	Motion of pltff. to enlarge order of Nov. 7, 1949 for an order excusing the witness from answering questions privileged by the Swiss law argued and overruled; order to be entered; reported by Mr. Cinciotta. Bailey, J.
Jan.	10	Order denying motion of pltff. to be excused from answering questions on grounds of foreign law or privilege. Bailey, J. (N).
Jan.	16	Supplemental answer and 2nd counterclaim of deft. #2; served 1-12-50.
Jan.	25	Motion of defts. for amendment to Order of July 5, 1949; P & A exhibits (4); served 1-25-50; M. C. 1-25-50.
Jan.	26	Affidavit of service.
Jan.	26	Notice attaching answer amended in accordance with orders of Court and supplemental answer of defts. J. H. McGrath and Georgia N. Clark; counter-claims (5); exhibits (8).
Jan.	27	Motion of plaintiff that deposition of Hans Sturzenegger be not taken on certain days; served 1-27-50.
Jan.	30	Transcript of proceedings, 1-5; 6-50.
Jan.	31	Order for pretrial hearing for the appointment of a Master and for the continuance of the deposition of Hans Sturzenegger. Laws, C. J.
Feb.	1	Motion of pltf. to modify order of July 5, 1949; memo in support; affidavits (2); served 2-1-50; M. C. 2-1-50.
Feb.	1	Memo in opposition to defts. motion for an amendment of order of July 5, 1949; served 2-1-50.
Feb.	1	Stipulation extending time for pltf. to reply to 2nd, 3rd, 4th, and 5th counter-claims to and incl. March 2, 1950. (Fiat). Leech, J. (N).

Feb. 7 Memo of defts. in opposition to motion of pltfs. that deposition of H. Sturzenegger be not taken on certain days.

Feb. 14 Exhibit of plaintiff's noting exceptions to order appointing Special Master to case. Fiat. Laws, C. J.

Feb. 14 Order referring action to Special Master; appointing Wm. J. Hughes, Jr., as special master and directing plaintiff to file an undertaking in sum of $5,000 within 30 days. Laws, C. J.

Feb. 14 Formal objections of plaintiff to order of reference. Fiat. Laws, C. J.

Feb. 15 Memo of defts. in opposition to plaintiff's motion to eliminate Sturzenegger records from order of July 5, 1949 and in support of defendants' motion to amend order to provide, etc.; exhibits (3); mailed 2-14-50.

Feb. 20 Certified record of Official Reporter; pp. 1-15, Jan. 9, 1950.

Feb. 21 Transcript of depositions of Josef Schmitz, 1-24-50 and 2-9-50, published and filed; volumes 1-12; pp. 1-323 incl.

Feb. 21 Exhibits to deposition of Schmitz; plaintiff's exhibits pp. 1-7; defendants' exhibits pp. 1-50.

Feb. 24 Certified records of official court reporter, pp. 1-12; 11-1-49.

Feb. 24 Notice by defendants of filing deposition of J. Schmitz on 2-21-50; mailed 2-24-50.

Mar. 3 Oath of Wm. J. Hughes, Jr., Special Master.

Mar. 7 Motion of plaintiff to modify order of reference, 2-14-50; P. & A.; mailed 3-7-50. M. C. 3-7-50.

Mar. 8 Stipulation further extending time for plaintiff to reply to 2, 3, 4, and 5 counterclaims.

Mar. 8 Order of consolidation of record of proceedings. Laws, C. J.

Mar. 14 Memo of defendants in opposition to plaintiff's motion to modify order of reference of 2-14-50; exhibits "A" and "B"; mailed 3-14-50.

Mar. 30 Certified record of Official Court Reporter, Vol. I, pp. 1-39; Jan. 27 and 30, 1950.

1950

Apr. 18 Affidavit of Swiss law in support of motion to modify order of July 5, 1949 and in opposition to defendants' motion for amendment of said order; served 4-18-50.

Apr. 21 Order denying motions of plaintiff and defendants to amend order of July 5, 1949 with respect to papers of H. Sturzenegger, et al. Laws, C. J.

Apr. 28 Stipulation further extending time for plaintiff to reply to 2nd, 3rd, 4th and 5th counterclaims to and including June 2, 1950. Fiat. Curran, J. (N).

May 29 Order amending last paragraph of order of Feb. 14, 1950. Laws, C. J.

June 1 Stipulation further extending time for pltf. to reply to 2nd, 3rd, 4th, and 5th counterclaims to and including July 1, 1950. Fiat. Curran, J. (N).

June 2 Undertaking of pltf. in the sum of $5,000 with Maryland Casualty Co. Surety, as security for costs;

June 14 Motion of plff. to enjoin Master from varying Chief Judge Laws' order of July 5, 1949; notice. M. C. 6-14-50.

June 14 Answer of Master to motion to enjoin; serv. ack. 6-14-50; exhibits 1, 2, 3, and 4.

June 19 Memo of defts. in opposition to motion of pltf. to enjoin the Master; mailed 6-16-50.

June 20 Memo of pltf. in support of motion to enjoin special master from varying court's order of July 5, 1949; mailed 6-19-50; Appendix A & B.

June 22 Motion of defts. for an order requiring pltf. to produce the papers of H. Sturzenegger & Co. in the U. S. and not in Basle, Switz.; notice; mailed 6-22-50; exhibit.

June 22 Motion of defts. for relief because of pltf's. non-compliance with order of July 5, 1949 with respect to the production of the papers of H. Sturzenegger & Cie.; notice; mailed 6-22-50.

June 22 Motion of pltf. to be relieved from portion of order of July 5, 1949, etc.; exhibit (1); serv. 6-22-50.

June 23 Order of memorandum overruling pltf's. motion to enjoin Master from varying the order of this Court of July 5, 1949. Laws, C. J.

July 7 Stipulations extending time for pltf. to reply to second, third, fourth and fifth counterclaims, to and including Aug. 1, 1950. Fiat Schweinhaut, J. (N).

Aug. 1 Motion of pltf. to dismiss second, third, fourth and fifth counterclaims of deft. McGrath; mailed 7-31-50; memo. M. C. 8-1-50.

Aug. 9 Stipulation extending time to answer motion to dismiss certain counts of counterclaim to and inc. Oct. 9, 1950.

Oct. 9 Memo in opposition to pltf's motion to dismiss 2, 3, 4 and 5 counterclaims of deft. #1; mailed 10-9-50.

Oct. 26 Depositions of [Hans Stuerzenegger, vols. 1] thru 57 incl.; exhibits 1 thru 798 inc. (deft.); exhibits 1 thru 91 incl. (pltf.); Stipulation of counsel that the deposition be withdrawn by special master pursuant to order dated 3-8-50.

Oct. 27 Notice of filing a deposition; mailed 10-27-50.

Oct. 31 Motion for dismissal of complaint under Rule 37(b); notice of motion; affidavit in support of motion; exhibits "A" "G"; P. & A. in support of motion; mailed 10-31-50.

Nov. 6 Motion of pltf. to enjoin master from entertaining deft's. motion for dismissal of complaint; memo in support of annexed motion to enjoin Special Master; Exhibits A, B, C, D, E; mailed 11-6-50. M. C. 11-6-50.

Nov. 8 Official transcript of proceedings, 4-18-50; pp. 1-37.

Nov. 8 Official transcript of proceedings, 6-22-50; pp. 1-40.

Nov. 9 Answer of Master to motion to enjoin; P & A.

Nov. 14 Memo of defts. in opposition to pltf's. motion to enjoin the Master from entertaining deft's. motion for dismissal of complaint; exhibits A and B; mailed 11-13-50.

Nov. 28 Motion of pltf. for reconsideration of motion of June 22, 1950, etc.; personally served 11-27-50; P & A; M. C. 11-28-50.

1950

Dec. 29. Memo of pltf. in opposition to deft's. motion to dismiss; exhibits; mailed 12-27-50.

Dec. 29 Motion of pltf. for rehearing of motion to dismiss 3rd, 4th and 5th counterclaims, mailed 12-29-50; memo. M. C. 12-29-50.

1951

Jan. 5 Memo in opposition to motion by pltf. for rehearing of its motion to dismiss 3rd, 4th and 5th counterclaims of defts.

Jan. 12 Pltf's. motion for reconsideration of pltf's. motion of June 22, 1950 to be relieved from that portion of order of July 5, 1949 requiring pltf. to produce records for inspection by the deft.; Heard ordered and submitted; Earws, C. J.

Jan. 12 Defts'. supplemental memorandum in support of motion for dismissal of complaint under Rule 37(b) for the failure of the pltf. to produce papers of H. Sturzenegger & Co.

Jan. 18 Motion of Eric F. Kaufman et al., to limit sanctions or stay proceedings pending appeal; Ex. (3).

Jan. 19 Motion of intervenor for an order staying as final determination of defts'. motion for dismissal for failure to produce papers of H. Sturzenegger & Cie and an order denying defts'. motion to dismiss in the event intervenor's rights are finally established; mailed 1-18-51; P & A; Appendix A and B. M. C. 1-19-51.

Jan. 23 Answer of Special Master to intervenor's motion to stay; mailed 1-22-51.

Jan. 26 Supplemental memo of defts. in opposition to pltf's. motion to enjoin the Master; served 1-26-51.

Jan. 26 Memo of defts. as to motion of Eric G. Kaufman and Aenni C. Kaufman to limit sanctions under Rule 37(b) or to stay proceedings pending appeal; served 1-26-51.

Feb. 9 Motion by pltf. for rehearing of its motion to dismiss the 3rd, 4th and 5th counterclaims of the defts., argued and submitted; reported by F. J. Attig. Matthews, J.

Feb.	19	Motion of pltf. to vacate and revoke the order of reference of 2-14-50; Memo in support of motion; mailed 2-19-51; M. C. 2-19-51.
Feb.	19	Opinion on motion to reconsider Court's order of July 5, 1949, requiring pltf. to produce records of H. Sturzenegger and Cie. and as to related motions. Laws, C. J. (N).
Feb.	20	Defts'. opposition to motion to vacate and revoke the order of reference of 2-14-50.
Feb.	23	Memorandum opinion on pltf's. request to allow further oral argument regarding the court's opinion of Feb. 15, 1951. Laws, C. J.
Mar.	1	Ordered that Special Master hold proceedings and take evidence and further ordered that action on the remaining motions be suspended. Laws, C. J. (N).
Mar.	9	Order denying motion to dismiss 2nd, 3rd, 4th and 5th counterclaims; granting motion for rehearing and denying motion to dismiss 3rd, 4th and 5th counterclaims. Matthews, J. (N).
Apr.	4	Stipulation extending time to reply to 2, 3, 4 and 5 counterclaims, to June 1, 1951. Fiat. Ping, J.
June	4	Stipulation extending time for pltf. to reply to counterclaims to and including July 2, 1951. Fiat. McLaughlin, J. (N).
June	18	Stipulation of counsel changing date of resumption of proceedings on motion for reconsideration of order of 7-5-49, to June 28, 1951, etc.
July	2	Pltf's. reply to defts'. 2nd, 3rd, 4th and 5th counterclaims; mailed 7-1-51.
July	2	Interrogatories of pltf. to deft. #1; mailed 6-30-51.
July	18	Defts'. objections to interrogatories of pltf.; serv. ackn. 7-16-51; P. & A., exhibit "A".
July	18	Notice of motion and motion of defts for a protective order under Rule 30(b) to strike pltf's. interrogatories; P & A, exhibits A, B, C, D; service ackn. 7-16-51.
Aug.	3	P. & A. of pltf. in opposition to motion for a protecting order, etc.; exhibits (3).
Aug.	3	P. & A. of pltf. in opposition to defts'. objections to interrogatories.

Aug.	22	Defts'. trial brief on proceedings before the Special Master, pursuant to order of 3-4-51.
Aug.	31	Reply of deft. #1, Brief on the Proceedings before the Special Master (in the hands of the Special Master).
Oct.	16	Defts'. answer to pltf's. response to Reply Brief; mailed 10-16-51.
Dec.	4	Report of William J. Hughes, Jr., Special Master.
1952		
Jan.	17	Motion of defts. to reopen proceedings before the Special Master; mailed 1-17-52; affidavit; exh. A through H and J through M.
Feb.	13	Motion of defts. for production of documents under Rule 34; served 2-13-52; memo attachments A, B, C, and D; affidavit; exhs. (4).
Mar.	7	Order of Special Master, reopening proceedings.
Mar.	17	Memo. of law of deft.; served personally 3-15-52.
May.	31	Supplemental report of Special Master on reopening.
July	9	Findings of Fact and Conclusions of Special Master.
July	10	Pre. Memo. of plaintiff in opposition to motion of defendants to reopen proceedings before Special Master; S. 2-11-52.
July	10	Reply memo of defendants; exhibit.
July	10	Response of plaintiff to defendants' reply memo; mailed 3-25-52.
July	10	Memo of plaintiff for Special Master; S. 3-18-52.
July	10	Notice by Special Master of compliance with Rule 53(e)(1) FRCP; copies mailed to John J. Wilson, David Schwartz & Henry Fischer.
July	10	Transcript of proceedings before Special Master—29 volumes.
July	10	Exhibits of Special Master—9 folders.
July	10	Exhibits of Special Master—1 envelope.
July	15	Suggestion of resignation of defendant J. Howard McGrath, and appointment of successor; Ser. Ack. 6-19 and 6-23.
July	15	Order substituting James P. McGranery as a party deft.; Consent. Holtzoff, J. (N).
July	16	Stipulation extending time to file objections to report of Special Master to 9-8-52. Fiat. Pine, J.

Aug.	26	Opinion of Master on Govt's. motion for additional production of documents, under Rule 34.
Sept.	9	Defts.' objections to Master Report and memorandum in further support of defts.' motion to dismiss and in opposition to motion to be relieved from producing Sturzenegger papers; exhibits A to J; copies exhibits (3); mailed 9-8-52.
Sept.	19	Amended motion to limit sanctions; P. & A.; mailed 9-18-52; M. C. 9-19-52.
Oct.	15	Motion of pltf. for adoption of Special Master's report; mailed 10-14-52; memo; M. C. 10-15-52.
Nov.	17	Answer of pltf. to exhibits 1, 2 & 3 of Hoffmann affidavit in re deft.'s second discovery motion; c/serv. 11-12-52.
Nov.	19	As of 11-17-52; motion of intervenors Kaufman to limit sanctions; for adoption of Special Master's report heard in part and continued until tomorrow. Laws, C. J.
Nov.	19	As of 11-18-52. Hearing on motion resumed & respited until Nov. 25, 1952. Laws, C. J.
Nov.	19	Hearing on motion resumed & respited until Nov. 25, 1952. Laws, C. J.
Nov.	24	Hearing resumed on motion and respited until tomorrow. Laws, C. J.
Dec.	31	Motion of defts. for production of original books of pltf., I. G. Chemie; P. & A.; affidavit, exhibits 1-10.
1953		
Jan.	14	Certified record of official reporter; Nov. 17, 18, 19, 1952, Vol. I, pp. 1-198.
Jan.	14	Certified record of official Court reporter; Nov. 24 & 25, 1952, Vol. I, pp. 199-418.
Jan.	23	Partial order for production of documents by Special Master.
Jan.	29	Motion of pltf. for additional discovery and for description of withheld documents; notice; c/m 1-28-53; memo.
Feb.	5	Motion by pltf. to require defts. to cooperate with pltf. in preparing application to Swiss Federal Atty. under paragraph 3 of his letter of 6-25-51; memo in support; exhibit; c/m 2-5-53; M. C. 2-5-53.

Feb.	5	Memo of pltf. in opposition to deft.'s motion about pltf.'s books; c/m 2-2-53.
Feb.	5	Memo of pltf. for Special Master regarding 1600 documents; c/m 2-3-53.
Feb.	6	Defts.' supplemental memo responding to pltf.'s supplemental memo to Chief Judge Laws; c/m 2-6-53.
Feb.	9	Memorandum of defts. in opposition to pltf.'s motion for additional discovery, etc.; c/m 2-6-53.
Feb.	19	Opinion of Special Master on Government's Right to inspect 3rd parties' documents in possession of pltf.
Feb.	20	Memorandum Opinion (n). Laws, C. J.
Mar.	6	Affidavit of Walter Germann in opposition to defts.' motion regarding pltf.'s books; c/m 3-6-53.
Mar.	9	Suggestion of resignation of deft. James P. McGranery, Atty. General of U. S. & Georgia Neese Clark, Treasure of the U. S., and appointment and qualifications, etc. as to successors, ser. ack. 2-26-53.
Mar.	9	Order that Herbert Brownell, Jr. be substituted as party deft. in place and stead of James P. McGranery and that Ivy Baker Priest be substituted as party deft. in place and stead of Georgia Neese Clark. (n). Laws, C. J.
Mar.	19	Ruling of Special Master on motion for stay.
Mar.	23	Order of Special Master denying motion without prejudice to pltf. to the Court by 3-23-53.
Mar.	23	Motion of pltf. to stay proceedings & memo; c/m 3-20-53; exhibits (4); M. C. 3-23-53.
Mar.	25	Memorandum of defts. in opposition to pltf.'s motion to stay proceedings; c/m 3-25-53.
Mar.	30	Pltf.'s reply memorandum upon its motion to stay proceedings; c/m 3-30-53.
Mar.	31	Order over-ruling deft.'s exceptions to report of Special Master; adopting report of Special Master & Holding in abeyance deft.'s motion to dismiss. Laws, C. J. (N).
May	12	Order staying proceedings before Special Master. Laws, C. J. (N).

June 8 Motion of plaintiff for extension of time relating to order of 3/31/53; notice; c/ser. 6-8-53; affidavit; exhibits A thru L; memo.

June 16 Pltfs. motion for extension of time relating to Chief Judge Laws' order of 3-31-53 heard and granted; pltf. granted an additional thirty days. Laws, C. J.

June 17 Transcript of testimony June 15, 1953; Middlemiss, Reporter; Vol. 1, pages 1-21.

June 19 Orders extending times to and including 7-22-53. Laws, C. J.

July 14 Motion of pltf. for further extension of time re order of 3-31-53; notice; c/ser. 7-14-53; affidavit; exhibits A & B; M. C. 7-14-53.

Oct. 16 Motion of pltf. to vacate par. 4 (as amended) of order of 3-31-53 and to extend time to make further discovery under order of 7-5-49; c/s 10-15-53.

Oct. 16 Memo of deft. Gov't. re: pltf.'s motion to vacate par. 4 of order of 3-31-53; etc.; exhibits (2).

Oct. 20 Affidavits (2), in support of pltf's motion to vacate par. 4 of order, etc.; c/ mailing.

Oct. 21 Transcript of record, 10-20-53; reporter Ida Z. Watson.

Nov. 16 Memorandum denying pltf.'s motion to vacate paragraph 4 (as amended) of the order of 3-31-53, and will dismiss its suit with prejudice; order to be presented. Laws, C. J. (N).

Nov. 19 Objections of pltf. to deft's. draft of order of dismissal; request for findings of fact and motion for dismissal of deft's. five counterclaims; c/s 11-19-53.

Nov. 23 Response of deft's. to objections of pltf. to deft's. draft of order of dismissal; requests by pltf. to findings of fact and motion for dismissal of deft's. five counterclaims; c/m 11-23-53.

Nov. 25 Appearance of Harold I. Baynton withdrawn; and enter app. Dallas S. Townsend for defts.

Dec. 21 Memorandum opinion. Laws, C. J.

Dec. 21 Order directing pltff. complaint be dismissed with prejudice. Laws, C. J.

Jan.	8	Order permitting pltff. to deposit $250.00 cash in lieu of cost bond on appeal. Laws, C. J.
Jan.	8	Notice of appeal by pltff.; deposit for costs by Wilson, $5.00 (copies mailed to David Schwartz, Robert Sher, Edmund L. Jones and Henry F. Butler).
Jan.	8	$250.00 cash in lieu of bond deposited by pltff.
Jan.	18	Pltff's. designation of record on appeal; C/M 1-18-54.
Jan.	18	Statement of pltff. of points on appeal; C/M 1-18-54.
Feb.	1	Defendants' counter-designation of Record on Appeal; C/M 1-29-54.
Feb.	16	Order authorizing Clerk to transmit original papers to Court of Appeals and that upon final determination of this action, all original papers are to be returned to the Clerk and extending time to file record on appeal to and including 3-15-54. (N) Laws, C. J.
Feb.	18	Plaintiff's additional designation of Record on Appeal, C/M 2-17-54.
Feb.	18	Transcript of Proceedings (2) before Special Master, pp. 1-67, 2-17-50; pp. 68-164, 3-1-50.
Feb.	18	Plaintiff's memorandum in opposition and or in re Defendants' second motion under F. R. C. P. 34; C/M 4-8-54.
Feb.	18	Transcript of Proceeding Oct. 28, 1952 before Special Master.
Feb.	18	Transcript of Proceedings Jan. 8, 1953, before Special Master.
Feb.	23	Memo of Plaintiff for Special Master in relation to hearings pursuant to order of reference of Mar. 1, 1951.
Feb.	23	Plaintiff's reply brief, Aug. 31, 1951.
Feb.	23	Plaintiff's lists captioned: Documents to be exhibited to OAP on 12-2-52; Documents shown to Schwartz 12-3-52; & Revised answer to 1127-1357.

Feb. 23 Defendants' draft of order dismissing complaint delivered to C. J. Laws Nov. 17, 1953.

Feb. 23 Letter from David Schwartz to Chief Judge Laws, 12-19-53, with attached draft of amended proposed order.

Feb. 28 Memo by Plaintiff requesting Chief Judge Laws to allow further oral argument, dated 2-19-51.

Mar. 1 Plaintiff's memorandum of 2-6-53 before the seizure order, etc.

Mar. 1 Plaintiff's supplemental memorandum, etc. of 2-2-53.

Mar. 1 Plaintiff's memorandum in support of motion under Rule 53(E)(2), 10-27-52.

Mar. 3 Plaintiff's response to defendants' reply of 10-15-51 & exhibits (4).

Mar. 3 Plaintiff's exhibit & attachments (4).

Mar. 3 Transcripts (3) of proceedings before Special Master July 8 & 9, 1952, & Mar. 17, 1953.

Mar. 3 Plaintiff's exhibits Nos. 1, 3, 3A, 3-b, 3-c; 4, 4a; 5, 5-a; 6, 6-a; 7, 7a; 8, 8a; 9, 1-2; 10, 10-a; 11, 11a; 12, 12-a; 13, 13-a; 14, 14a; 15, 15a; 16, 16a.

Mar. 5 Letter dated 11-26-52 to Special Master from John J. Wilson.

Mar. 5 Letter dated 7-27-51 to Special Master /s/ John J. Wilson & attached exhibit.

Mar. 11 Official transcript of reporter of proceedings on motion to enjoin, etc. of 1-12-51.

Mar. 12 Official transcript of reporter Dec. 17, 18, 1953; pp. 1-76.

Mar. 15 Stipulation as to exhibits (copies & photostats) to be used as record on appeal approved. Pine, J.

Mar. 15 Twenty-five exhibits of pltf., used at hearing 7-12-51 before Special Master.

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Mar. 15 Pltf. (Hug) exhibits 1 to 3 incl. & 5 to 10 incl.

Mar. 15 Deft's. (Hug) exhibits, 5, 5(a) & 6, 6(a).

Mar. 15 Pltf.'s exhibits 17 to 91 inclusive (except 19 & 20) used during cross-examination of Dr. Hans Sturzenegger.

Mar. 15 Deft's. exhibits A-1 thru A-11.

Mar. 15 Deft's. exhibits 1a & 4.

Mar. 15 Deft's. exhibits (3).

Mar. 15 Deft's. exhibits 1(B); 2(60); 3(66); 4(27); 5(43); 6(48); 7(32); 8(55); 9(18); 10(46); 11(59); 11-a(59); 12(31); 13(56); 14(13)(2); 15(88); 16(24); 17(42); 18(20); 19(26); 20(67); 21(68); 22(69); 23(70); 24(15a); 25(14); 26(14-c); 27(14d); 28(14b); 29(14bb); 30(19); 31(11b); 32(11a); 33(11c); 34(49); 35(6); 36(36); 37(38); 38(15); 39(14); 39(14); 39b(14); 39c(14); 39d(14); 39e(14); 39h(14); 39f(14); 39i(14); 39j(14); 39k(14); 39L(14).

Mar. 15 Record on appeal delivered; deposit by John J. Wilson, $86.70.

1 **Transcript of Hearing Before Chief Judge Laws, December 3, 1948.**

43 MR. WILSON: . . . The only other thing I want to mention before sitting down, if the Court please, is the alternative motion which has been filed, that the depositions be taken in Switzerland. I was instantly met by my astute opponents with the statement, which is quite accurate, that under the Swiss procedures depositions could not be taken in this case according to the American methods—in other words, that probably letters rogatory would be the only manner in which depositions could be taken; and even after such letters might be issued, that under the Swiss custom and practice, a judicial officer of Switzerland would more or less regulate and control the taking of those depositions, and thus they could not be taken according to the American method.

I think that was an accurate statement of the situation. I know, from discussing the matter with people in official positions in Switzerland, that it is an outgrowth of the very important matter of sovereignty, which Switzerland is quite jealous and zealous to safeguard on every occasion. It is a historically known fact. It is the reason that Switzerland sits there today at the middle of Europe, a wonderful, thriving little country, with its economics as sound as ours are over here.

When the memorandum was filed which set forth a complete answer to the alternative motions that these depositions

44 could not be adequately taken in Switzerland, your humble servant got busy; and in the last week there has been delivered to the Department of Justice, by the Swiss Legation, a letter authorized by the Federal Political Department in Berne, that in the Interhandel case, which is this case, depositions may be taken in Switzerland

according to the American custom. They have made an exception for us in our case to permit it to be done.

The only possible qualification that is appended—and, save for the fact that these gentlemen grasp it as an excuse, I say it is of no material consequence, and it is quite understandable, when one sympathetically understands Swiss sovereignty—is a statement that the Swiss Government desires to have a representative present at the taking of the depositions, merely as an observer, and that the American Legation in Berne would be permitted, as well, to have an individual there, under the same circumstances.

That is the only qualification, and I say that is no qualification at all, to the free taking in Switzerland of depositions according to the American method in every sense of the word.

47 MR. SCHWARTZ: . . . This suit—and our affidavit shows it—involves what we believe to have been a 20-year conspiracy between I. G. Farben
48 and I. G. Chemie, a conspiracy, deliberately created years before World War II—as a matter of fact, in between the two world wars—for the purpose of cloaking I. G. Farben's property abroad, and a conspiracy having the most manifold ramifications that could have been deliberately created. We believe it involves hundreds of corporations, dozens of individuals, and millions and millions and millions of dollars worth of property; and that I. G. Farben used I. G. Chemie as its front, its neutral cloak, for its purposes. These are the facts underlying our lawsuit.

Was there such a conspiracy? Was I. G. Chemie a cloak, a fraud, a dummy, a pretense?

Who was in and around I. G. Chemie while all this was happening? Only three people now with the corporation. The others have died or resigned.

Hermann Schmitz, the president of I. G. Farben, was president of I. G. Chemie until 1940. He dropped out when it became perfectly clear there was going to be war.

Then Dr. Iselin was made president. But Dr. Iselin had been director of I. G. Chemie since 1929, a year after Chemie was created. So Dr. Iselin was an officer and still is an officer and managing agent of the plaintiff, and has been from 1929 until the present. He was there when all these directors signed things, did things and authorized things which we say constituted, in an economic sense, the most

infamous conspiracy with I. G. Farben.

Who else was there?

August Germann was one of the first directors of I. G. Chemie in 1928. He was a director ever since. He was there from 1928 to 1945.

Last and best of all we come to Dr. Hans Sturzenegger. He wasn't a director of Chemie when it began, no. A Mr. Eduard Greutert was a director. Eduard Greutert was manager and senior partner of a banking house. That banking house was to Chemie as a monstrous bank is to a single corporation it owns. That banking house was Chemie. It underwrote Chemie. It took its stock. It transferred the stock all around. It owned stock of General Aniline. And it did untold business with I. G. Farben.

Much of this is already a matter of record. Early this year we came before Your Honor with the request to take some depositions, before action was brought. We then showed an anticipated action was coming, and we wanted to perpetuate certain testimony. Mr. Wilson objected, and Your Honor ruled we might take it. We took those depositions and showed the banking house of Ed. Greutert & Cie. was involved, we think the testimony shows, like that with I. G. Farben—its agent, its principal, its functionary, its errand boy.

So the banking house of Ed. Greutert et Cie. had its senior partner on the board of I. G. Chemie from 1928 to about 1939 or 1940 or 1941. Then Mr. Greutert died. Who took his place? Dr. Hans Sturzenegger, the last of the trilogy we seek here today.

Dr. Sturzenegger worked for the banking house of Ed. Greutert et Cie. beginning in 1931. In other words, he came into the banking house, which is the alter ego of the plaintiff, two years after the plaintiff was created. That banking house has been the agent, the functionary, the clerk for I. G. Farben to such an extent that the plaintiff has practically admitted it in these pleadings.

Dr. Sturzenegger succeeded Ed. Greutert as head of the banking firm, and the banking firm then became H. Sturzenegger et Cie. And he succeeded Ed. Greutert as director of Chemie. So he had all these years of personal intimacy with this alleged conspiracy—by virtue of his connection with the banking firm of Ed. Greutert et Cie. until 1939 or 1940, at which time he joined the board of I. G. Chemie as the successor of Mr. Greutert.

Dr. Sturzenegger is much more than just an individual. It is quite a story to tell, Your Honor, and we have it in these papers. But he dominates a whole group of corporations, each of which owns each other—the most amazing corporate situation we have ever seen. They tell us at the SEC that they have never heard of anything like it, where a group of corporations in a circle own each other, and where

51 Dr. Hans Sturzenegger can be owner of this, and senior partner of that, and director of that, and stockholder of that.

We call that the Greutert-Sturzenegger Complex. That Complex owns and is I. G. Chemie. So, Dr. Sturzenegger is and has been a director of I. G. Chemie since 1940, and he was with the banking house, which is the alter ego of I. G. Chemie, since 1931. He is practically, as Mr. Wilson said, the manager of the plaintiff corporation.

Mr. Wilson: No, no; I quoted you as saying it.

Mr. Schwartz: I am sorry. We have said, and Mr. Wilson has quoted us as saying, that he is the manager of the plaintiff corporation. He created all these facts and knows all these facts; and is on the board of I. G. Chemie.

That shows Your Honor what these three people know.

Now, who else knows anything? All of the directors who were with these people who created and carried out the conspiracy have departed. They have either died or resigned. New directors have been added in 1945, 1946, 1947; and these people were, of course, elected after the German surrender. If there was a conspiracy between I. G. Farben and I. G. Chemie, it can be expected that the people elected to the board after the German surrender would be perfectly good, respectable, know-nothing citizens. Nobody has made a pretense that these directors know anything about it—

52 and they couldn't know, because they weren't associated with the plaintiff in the years of the conspiracy.

Who else might know anything about it? Mr. Walter Germann? I am not clear what Mr. Wilson thinks Mr. Walter Germann is. Is he the sole officer of the plaintiff? He can't be, because they have conceded Dr. Iselin is an officer. He must be, then, the general manager of the plaintiff. But what can he know about the situation? He was made general manager in 1945, almost contemporaneous with the German surrender.

We have another point. In 1940 the plaintiff went through a metamorphosis which they thought would clear them of German taint, and in 1945 they went through another metamorphosis. They changed their corporate name. No longer were they the I. G. Chemie which for 20 years has been associated with the I. G. Farben. They became something called "Interhandel" or Societe Internationale.

They dropped some directors. They dropped a director named Gadow, who had been perhaps subordinate to Dr. Sturzenegger, but certainly no more intimate with the plaintiff.

They appointed as general manager a young man named Walter Germann—and it may be his father is the August Germann whom we want. Now, Walter Germann can't know anything about this conspiracy. He was a child when it began, and he

53 didn't become general manager until 1945.

So we think it is perfectly plain that the three people we want—Sturzenegger, August Germann, Iselin—are the managing agents of the plaintiff with respect to the matters underlying this suit, and that under the Fruit Growers case, and under the reasoning of that case, they must come forward.

61 But on the convenience of going or not going to Switzerland, and whether or not that is a one-way proposition only, it is simply a matter of relative convenience. Mr. Wilson doesn't want to bring three people to Washington, because they are to be away from their papers and may be unable to answer without them. We don't want to transport three, five, seven, or eight people, including secretaries, interpreters, and court reporters, to Switzerland, because if we do, we are going to be unwelcome at the American Consulate, where they are very crowded, and we will have to live in a Swiss hotel; and we will be doing nothing but getting passports, getting travel reservations, renting space, hiring people, changing currency, and, last and not least, we have to take with us a roomful of documents. They have documents, but they have memories. We have documents, but we can't possibly remember all of this.

We have collected, Your Honor, about twenty-five thousand documents bearing on this case. We have been analyzing those documents for as long as we can remember. The story is in the papers, Your Honor. We think it would be an insoluble problem to take with us to Switzerland the material we have to have in order to examine these people about a 20-year conspiracy.

72 Mr. Wilson: . . . If Your Honor should take this matter under advisement, I hope you will look into the situation. But I say to the Court—and Mr. Schwartz referred to it—that this is a matter, as Mr. Schwartz says, in which the two nations are entangled. And the two volumes to which he referred as supplying me with the specification as to the course of his inquiry in this case are the two volumes issued by agencies as the result of a treaty which was entered into between the United States and Switzerland; and, as the result of the processes of those agencies under this treaty, I can say the plaintiff

in this case has been given a clean bill of health—and I was hoping, Mr. Schwartz, you were going to say you would stipulate the contents of those two volumes that came from what you call a Swiss agency in this case.

73 Mr. Schwartz: May I suggest, Your Honor, that the two volumes Mr. Wilson seems to think are relevant to the decision of this motion be introduced as appendices to either of our affidavits? There is the problem of agreement on translation, but I am sure we can agree in the matter of a week or two. They are 80 to 100 pages long, and we will file with the Court the two documents. I can hardly see how that cannot be done, now, because Mr. Wilson alleges for the record that his plaintiffs have received a clean bill of health. Meanwhile we continue to state it is the position of this Government that they are cloaks for Farben. The two statements are rather contradictory, and his rests on the two documents; so I suggest that we be permitted to file them with the Court.

Mr. Wilson: As part of this motion?

Mr. Schwartz: As joint appendices to our respective affidavits.

Mr. Wilson: Surely. And will you go further and let me file as well the Swiss review decision in this case?

Mr. Schwartz: I will be glad to see you file the decision, and I think we can agree on the translation.

Mr. Wilson: All right.

Filed April 7, 1949. Harry M. Hull, Clerk.

83 **Transcript of Hearing Before Chief Judge Laws, February 18, 1949.**

95 The Court: I, frankly, will give you my view, and let you gentlemen argue. I will give you my first-hand view and let you argue against it if you wish.

96 My first view is that you have the right to complete, at least the right not to be interrupted in your present study of the records, for the purpose of examining the witnesses. I guess they are here now?

Mr. Wilson: One of them is here.

The Court: The witnesses are coming here or who are here. I do not think plaintiff ought to interrupt that.

However, I do think that before the examinations are

completed they ought to have the right to look through these records themselves. If necessary, I would be inclined to postpone completion of the depositions to give them an opportunity. That is my first thought; I am not deciding it. I am indicating what you can argue against, because I feel that way.

In the second place, I think that at an appropriate time and place you representatives of the Government should have a like opportunity to examine documents in anywise conceivably pertinent to any issue which you have here, and I will give you a lot of latitude on it. On the other hand, I do think there ought to be some type of specification, so that it does not amount to a house-cleaning job. I mean that is in general what I am trying to rule. If you gentlemen want to argue against that, or enlarge upon it, it is all right with me.

MR. SCHWARTZ: No, sir; it is all right with me.

* * * * *

99. MR. SCHWARTZ: Your Honor, I think the real issue is this. I am trying to be as frank as I can. The cat is out of the bag, Your Honor. These transactions occurred all over the world. We have documents from I. G. Farben which implicate the plaintiff to the hilt. Unfortunately, they may not be very good evidence, so we are asking the witness whether he did all these things, and he does not remember.

Your Honor, this witness does not remember how many fingers he has on his right hand, and I am prepared to demonstrate that, Your Honor, if you will only hear me.

Then, we show him a document that asks him to do something for the German Consul General, to do something for Farben, and he still does not remember.

THE COURT: I am not unfamiliar with all this. I went through this other case lately, and I know exactly how that was done, and how it was done in this court room. I understand your position. However, how much time do you think it would run?

MR. SCHWARTZ: Your Honor, I honestly do not know. I think a month.

131 **Transcript of Hearing Before Chief Judge Laws, April 1, 1949.**

135 Mr. Wilson: Before we get to a criticism of the language of the order itself, as distinguished from the substance of the order, the principal contest over the substance of the order lies in the effort which is made by Mr. Schwartz and his colleagues to require the plaintiff to produce the books and records of a private banking concern known as H. Sturzenegger & Company at Basle.

We call Your Honor's attention to the fact that Rule 34, which is the discovery rule, requires a party to produce records which are in his possession, custody, or control. It is our very firm position that the books and records of H. Sturzenegger & Company, which is a partnership, are not in the possession, custody, or control of the plaintiff.

136 Now; if the Court please, the Sturzenegger partnership consists of the following: Hans Sturzenegger, who was the witness over here and who was produced over here because he was a director of the plaintiff, the plaintiffs being a corporation. Hans Sturzenegger is the partner with unlimited responsibility in the private banking firm of H. Sturzenegger & Company. A corporation known as Industrie Bank, a Swiss corporation, is a partner with limited responsibility. The plaintiff has a silent passive participation in the firm.

Strangely enough in Switzerland corporations may have interests in partnerships. The commercial register in which is recorded the public interests, you might say, of partnerships; records that the Sturzenegger partnership consists of Hans Sturzenegger as an unlimited partner and Industrie Bank as a partner with limited responsibility. The status of the plaintiff in the partnership, the silent participation, sometimes called silent partner, is such that it is not even required to be recorded in the commercial register.

In order that Your Honor may know exactly what the status is, there is on its way from Europe at this moment an affidavit executed by Walter Germann, managing director of the plaintiff. The language of the affidavit will be identical with the language of the cable which we re-

ceived yesterday, and which I should like to file in this case, under the heading of "Plaintiff's Cable in Opposition to

137 Defendants' Motion for Discovery." It is addressed to our firm and it states:

> "I, Walter Germann, managing director of Interhandel"—that is one of the several code names of the plaintiff—"hereby certify as follows: The books, files, documents, papers, and records of the firm of H. Sturzenegger & Company are not now and have not been in the possession, custody, or control of plaintiff either actually or constructively. They are in the actual and physical possession and custody of Hans Sturzenegger, the partner with unlimited responsibility, at the firm's place of business and he has complete control over them. Plaintiff does not have joint offices with H. Sturzenegger & Company and does not have physical or legal access to their files or records. Plaintiff's position in relation to the firm is such that it does not have nor could it assert any control whatever over such records and files; it could not obey an order to produce them nor could it compel Hans Sturzenegger to produce them. Plaintiff is not even entitled to inspect the business books and papers of the firm."

Now, the drafts of the order submitted by the Government are permeated with the effort to require the plaintiff to produce the books and records of H. Sturzenegger

138 & Company. An effort is made in an affidavit which Mr. Schwartz has prepared and in which he includes data from testimony of Mr. Sturzenegger and from other records to argue—not to establish, but to argue—that they believe that the records of Sturzenegger are under the control of the plaintiff.

Now, there is nothing in the ten or a dozen contentions which Mr. Schwartz makes in that respect which could possibly contradict the cable certification of Mr. Walter Germann, and we therefore submit that it is outside the scope of the power of this Court to enter an order requiring the plaintiff to produce the records and files of Sturzenegger & Company, since, as I have said before, they must be in the possession or custody or control of the party.

The partnership of H. Sturzenegger & Company is not a plaintiff in this case either in its partnership name or individually. The affairs of H. Sturzenegger & Company may be relevant to this suit, and the testimony of Sturzenegger is relevant, and a duces tecum in Switzerland for the production of the records of H. Sturzenegger & Company served upon Mr. Sturzenegger might very well produce matter which comes within the scope of this inquiry. But this motion directed at the party—and Your Honor will remember that Rule 34 is limited to parties—must be predicated upon establishing the possession or custody or control in the party of the books and
139 records which are sought.

The burden is on the movant to establish that. The movant has come in in this case—the defendants—and, by a series of conclusions, has argued that they must be in the control of the plaintiff.

We say there is no proof that they are, and we say that what we have just handed Your Honor establishes that they are not; and the most convincing situation lies in the fact that, under the terms of the arrangement between the plaintiff, as a sleeping, silent partner in the Sturzenegger firm, it cannot even inspect the books and records of the firm. So I submit that there is utterly no basis for including in this order a requirement that we produce the books and records of Sturzenegger & Company, because we would not be able to comply with that order.

THE COURT: Are these the records that I indicated that I would permit the Government to see when we had the last hearing?

MR. WILSON: We did not discuss these phases separately.

THE COURT: You did not have this——

MR. WILSON: We did not get to this point.

THE COURT: What were the records that I said I would let the Government see?

MR. WILSON: Your Honor was not made conscious, in the last hearing, by either side, of the fact that there has
140 always been a serious controversy between us on

this point; because of the way Your Honor disposed of the matter last time in ruling on reciprocal discovery, which was the principal thing you ruled on, without details as to what would be the subject of the discovery. We did not get—either side—to the point where we discussed this very important point.

Now, my friends on the other side have implied, in correspondence with Your Honor and in memoranda, that we waived the point. It is absolutely silly. There is nothing more serious in our minds in this lawsuit than our inability to produce the records of H. Sturzenegger & Company; and on any occasion and on every occasion whenever that issue would be raised and has been raised, we state and have stated definitely our opposition to it and our inability to produce it. So Your Honor has not yet passed on this point specifically. It was in the motion papers; it was in the memoranda; but was not discussed.

Now, the motion also seeks——

THE COURT: Then, your argument this morning is, in effect, that in so much as I did not comprehend the ramifications of the nature of the order I was making, I should take a different stand about it?

MR. WILSON: Not at all, sir; not at all, sir. Your Honor never took a stand on this specific point. Your Honor must have been thinking of this——

141 THE COURT: Didn't I rule that the Government spend a month investigating some records and aren't these the ones?

MR. WILSON: I can't, of course, divine Your Honor's thinking, but Your Honor must have ruled that the defendants could have reciprocal discovery of the plaintiff's records. Now, that is what you had to rule——

THE COURT: Is that what they applied for?

MR. WILSON: Yes, but they say that we can produce the Sturzenegger's records as part of the plaintiff's records, don't you see?

THE COURT: I see.

Mr. Wilson: In other words, it is only natural, if Your Honor declared yourself in favor of reciprocal discovery——

The Court: In other words, you are not arguing now against their having access to any of your records?

Mr. Wilson: Not our records, no; not anything that is relevant. I mean anything that comes within the rule.

The Court: That is right, but your attack or your point is that those records as to which your corporation has no access should not be included in the order?

Mr. Wilson: That is right, sir; and I am not assailing one bit Your Honor's determination that there should be discovery by the defendants of the plaintiff's records. That stands. I am not assailing that at all. I am saying to Your Honor——

142. The Court: I have got it.

Mr. Wilson: ——that the records of Sturzenegger are not our records.

Now, a very important angle on this is that included in the demand for these records is one that we produce the records of a Swiss corporation known as Osmon. Osmon is a wholly-owned subsidiary of the plaintiff in Switzerland. We have respectable authority which says that, under Rule 34, the Court does not have the power to require the party to produce the records of its wholly-owned subsidiaries. We do not urge that here. Since we do have control, through stock ownership, of the records of Osmon, we would not oppose the inclusion in the order of such records of Osmon as come within Rule 34.

Now, those are the matters of substance that occur to me at the moment; and the thing that is uppermost in my mind, and has always been, is this matter of Sturzenegger & Company, whose records we cannot produce; and Your Honor, I hope, will permit me to add to the record, as soon as it arrives, in affidavit form, the very thing which Mr. Germann has sent to us in cable form, if it should be deemed that that is inadequate for the purposes of this proceed-

ing. It is on its way, I was assured yesterday, and it will be in that language.

153 MR. SCHWARTZ: That is, Your Honor, where we stand. We have a conspiracy. We can get to the heart of it only if we have every aid, every right, from the courts. Your Honor, we were in the United States. This alleged co-conspiracy was created in Germany 20 years ago. It was the most involved thing that I have ever seen. How can we get to the heart of that if we tell them everything we know, and then where are we?

THE COURT: Of course, by the same token, you want everything they know, don't you?

154 MR. SCHWARTZ: Yes, Your Honor, but after trial. We want Mr. Sturzenegger to tell us the history of these affairs. If he does not know, he can look at his own records. Your Honor, recently, in the last two years, he has submitted to an intensive examination by his own government. He is pretty well refreshed on these matters now.

THE COURT: Now, do you have any authorities on that? As I understand it, you want to make a full and complete study, which I would judge would be entirely proper under the new rules, of Sturzenegger's partnership and all of their various and sundry connections and get all of their records and look at them and study them and see what you think is pertinent, get your witnesses lined up to support them, and be immune from surprise cross examination; but, by the same token, you do not seem to want to have that done with them.

MR. SCHWARTZ: I am sorry. I do not mean that we won't trade every record in our house for every record in their house that they need. I only say that while we are examining the co-conspirator on the deposition there is no reason to interrupt the deposition.

192 Mr. Wilson: Now, I have said, I think, all I want to say on the question of the character of discovery of the documents of the Government which we wish to make, and I understand Your Honor's inclination in that respect, and it is highly satisfactory to me, and I have no disposition to pursue that point any further.

We have discussed at great length the matter of simultaneous inspection. Your Honor has expressed your views on that. You have heard mine. Your Honor has certain features of it under consideration. There are still two features, one of which I have not discussed at all, and the other of which I want to recur to.

The one to which I wish to recur is the Sturzenegger situation. The suggestions made by Mr. Schwartz that he has culled from records of the Swiss Compensation Office and from the testimony of Mr. Sturzenegger certain things which make it a fair inference, a reasonable conclusion, that the records of H. Sturzenegger & Company are in the possession or under the control of the plaintiff in this case—I say that the things upon which he relies do not establish that, and I say also that, in the face of Mr. Germann's cable affidavit, if I may call it that for the purpose of this discussion, they must utterly disappear.

193 Now, Mr. Schwartz claims that everything which Mr. Germann has said in his affidavit or cable is a conclusion. He complains about the fact that we have withheld from him the copies of the partnership contract. Mr. Schwartz knows that instead of using the method of trying to subpoena these papers out of me, he could, a long time ago, have made a motion, under Rule 34, served upon me, for the discovery from the plaintiff of these partnership contracts.

It has been entirely obvious to those on our side as to why that was never done. It is entirely obvious to us that in his effort to get a shotgun motion for discovery granted in this case, which did not comply with the rule as to relevancy, he did not, at any stage in advance of

that, want to make any particularization in the motion which would detract from what would be thought to be a strong position for the fishing expedition which he seeks under the order which he has prepared.

I have got the partnership contracts, and I am ready at this time to present to Mr. Schwartz first an English translation of the pertinent partnership contracts and, for his inspection, the German text, which I will photostat before the day is over and deliver to him.

THE COURT: Now let me ask you this. How does this matter of the concern of H. Sturzenegger & Company of Basle come in here?

194 MR. WILSON: Your Honor, the defendants maintain that the plaintiff has such control——

THE COURT: Yes, I know that, but how does it come into this? I have not seen it mentioned in this order.

MR. WILSON: The draft order, time and time again mentions it. Let me refer Your Honor——

THE COURT: I am looking at a three-page order.

MR. WILSON: Look at the more lengthy one first, although the distinction does not exist between them on this point. Look at the three-page order Your Honor speaks of.

THE COURT: Let me ask you this. Just a minute. Is this paragraph 4 on the three-page one, on page 2, the one we are talking about? It has some blanks in it.

MR. WILSON: Let me be sure I have what you have. I have, sir, a six-page order.

THE COURT: No.

MR. WILSON: And I have two pages of an alternative subdivision D accompanied by a list of nearly a thousand names.

THE COURT: The one I have I think is the one that you submitted, dated February 21.

MR. WILSON: Well, I am not addressing myself to my order, because my order is not subject to the criticism which I am now making.

THE COURT: I thought that was Mr. Schwartz', but

195 guess it is not. It is yours now. What I want to know is this. Look at number 4 of yours.

Mr. Schwartz: It is the one with (a), (b), (c), and (d), and a blank therefore?

The Court: Yes. Why do you need those specifications? Why can't we say, "The defendants may copy and inspect documents in the possession, custody, and control of the plaintiff, except such documents as are privileged or are the work-product of lawyers which have any relation to."——

Mr. Schwartz: Your Honor, we tried to say that. That was the job you gave us of designation.

The Court: Well, I mean, can't we do it in general language with relation to the organization of such and such corporations, and things of that sort?

Mr. Schwartz: We did it in two ways. They are in our orders. We tried it two different ways. The first one was the order which Mr. Wilson referred to, in the six-page order.

The Court: Let me tell you what I am thinking about, and maybe you gentlemen can argue to this point. I do not know, very frankly, Mr. Wilson, whether you have access to these or not, or whether your man does, or whether your plaintiff corporation does. If they have relation to the partnership, I would rather guess they would have some kind of production——

196 Mr. Wilson: Let me interrupt you at this point.

The Court: Suppose we use this language that you have got here: "Copy and inspect documents in the possession, custody, and control of the plaintiff and in any wise relating to so and so;" and then if it turns out later on that it does not and we have reason to believe that there was wilful violation of it, then we have a question of sanctions of the Court. It is very difficult to tell in advance about a proposition of this sort.

As I understood you to argue in the opening, the corporation itself abroad has a right or an interest in a part-

nership. You have the president or managing director, or whoever is, of this corporation who is before the Court. I would imagine, in the ordinary course of events, he would have some control over it. I know that technically he might not, but you could find out whether he had or not.

Mr. Wilson: Your Honor, may I say, in great respect, the record is to the contrary of what you imagine. The affidavit of Mr. Germann is unequivocal on the point. Your Honor has not heard the details of this partnership. The relationship of the plaintiff to this partnership is unlike anything I am sure Your Honor has ever heard of in your life, and I say that with respect to the large experience which Your Honor has had in law matters. I say to Your Honor with great respect Your Honor should not indulge in

197 imagining that there is this access. That statement was not carelessly written. I prepared that statement for Mr. Germann to send.

The Court: I understood you to say—maybe I am wrong—that this corporation plaintiff had an interest contrary to what we had in the United States in this partnership. Did you say that?

Mr. Wilson: Yes, sir, but it is more of an interest of a creditor than it is the interest of a partner.

The Court: Then I understood that Sturzenegger is the—What is he? The managing director?

Mr. Wilson: No; he is a director of I. G. Chemie.

The Court: Didn't we find out that as a director he was sort of a managing officer?

Mr. Wilson: He was an officer, not necessarily a managing officer; an officer.

The Court: Does the evidence show that he is a member of the partnership?

Mr. Wilson: He is the unlimited partner, but you have not got Sturzenegger before the Court, if the Court please, to make correct a statement that Mr. Schwartz made I know inadvertently. He intimated that Sturzenegger is before

the Court in this case. Sturzenegger is not a party to this suit. H. Sturzenegger & Company is not a plaintiff. The plaintiff is a corporation, a Swiss corporation.

198 You can't think of it in terms of via Sturzenegger in this case; you must think of it in terms of via the plaintiff. Your Honor cannot speculate, I submit—and this is a serious point with me—Your Honor cannot speculate at all—that the plaintiff in this case can produce the records of Sturzenegger & Company. The only unequivocal evidence on the point before Your Honor is to the effect that they cannot.

Now, I have just handed to these gentlemen copies of the partnership contract, and I have another copy in my hand which I would like to dwell upon for a moment or two. Under the peculiar situation which exists, in which the business management of the partnership is committed to Hans Sturzenegger, the partner with unlimited partnership—and currently and since the end of 1943 the plaintiff in this case had had no power to interpose any vetoing with respect to the operational affairs of the partnership except in the matter of guarantees—the form of this internal agreement will show that the two partners, one with limited liability, and the silent partner, each designate a delegate to sit at the meetings of the partnership.

And astonishing as this clause may be, paragraph 8 of the contract contains the following provision:

> "The partners with limited responsibility are entitled to be informed of the course of the partnership affairs. However, only the special delegates,
199 who have to treat their knowledge as strictly confidential, are personally entitled to inspect the business books and papers of the partnership."

Now, the last sentence of the cable which Your Honor was handed this morning says unequivocally just that: The plaintiff does not even have the power to inspect the business books and records of the partnership. So that, despite the close business relationship which concededly exists

between the plaintiff and the Sturzenegger firm, and despite the fact that the plaintiff has a kind of interest in the Sturzenegger firm that I say the Court and I never heard of before reading this contract, nevertheless this is the contract between the parties, and it reflects a kind of interest which is so minimal as to constitute nothing much more than an investment by the plaintiff in the capital of the firm. It has no say in the management of the firm. It has no say in the conduct of practically any of the affairs of the firm, with the single exception that the firm cannot guarantee obligations of others without the approval, a perfectly natural provision, even if you view the plaintiff as a mere creditor in this partnership status.

And the result is, if the Court please, that, despite the insinuations of Mr. Schwartz, and despite the fact that they are close, Your Honor is confronted with a rule which says that you cannot order production of records from a party

200 unless they are in the possession or custody or control of the party; and the only direct evidence upon the point is what Your Honor was handed this morning, and which does not contain any even slight intimation that there is any control by the plaintiff over the records of the partnership.

As Mr. Whiteford has just suggested to me, this maneuver is not one which would permanently prevent the Department of Justice from getting these records upon an appropriate deposition of Mr. Sturzenegger in Switzerland. They could see what they wanted to see of his records. We are in the situation, if the Court please, where we could not obey an order of this Court.

Now, I like the idea which Your Honor suggested at first—the first part of it—that you would draw an order which would say that the plaintiffs shall produce for inspection by the defendants the books and records relevant, or whatever the term is that is used, which are in its possession and custody and control; and then you would leave for a later date, on the question of sanctions, whether we had a

legal liability to produce the records and books of Sturzenegger & Company.

I did not like that, but, frankly, I am not particular about it. We so firmly believe that the law supports the position and the contract supports the position which I have been arguing to you with respect to the relationship between Chemie and Sturzenegger that both our client and ourselves

201 are acting quite properly when we take the position which has been expressed in the cable which Your Honor has before you; but I want to say, in perfect candor, that if Your Honor passes an order here which requires the plaintiff to produce the books and records which are in its custody and possession and control, it will not produce the records of H. Sturzenegger & Company.

THE COURT: Well, now, suppose we ordered them to do it and then they do not do it. Then that would bring it up as to whether he could or not, wouldn't it?

MR. WILSON: Again, if Your Honor please, Your Honor is moving to the end of the thing and working backwards.

THE COURT: The trouble is I can't tell. Suppose the Hecht Company says, "I do not have certain records," and there is some intimation that they may have, and then we order them to do it, and then they do not do it. Isn't the answer to do that? What do we do then? If they are perfectly correct in saying they can't get them, they certainly are not going to have anything happen to them.

I really and truly do not see the difficulty about it that you do. I think if I had the problem right there, if the Judge ordered me to present something that was not in my custody, control, or possession, and he ordered me to do it, I would make a reasonable effort to get it. If I failed, I would report that back to the Court, and that would be the

202 end of it.

MR. WILSON: If Your Honor please, why is it that Your Honor wants to write H. Sturzenegger & Company's records into this order?

THE COURT: I do not know.

MR. WILSON: You are doing it.

THE COURT: I am assuming they are material; I do not know.

MR. WILSON: You are doing it. Materiality to this case is one thing; the right to reach them under Section 34 is another thing.

THE COURT: Of course, if you have a doubt about whether they have control or not, one quick way to resolve it is to order them to do it, and if they do not do it and make a good effort, acquit them. If we want to get the records, there is no use going through a lot of rigmarole.

MR. WILSON: Your Honor is writing an order now based on the record which is before you.

THE COURT: The record is right strong, Mr. Wilson. Here is a partner who is not a managing director, but a director of the other. I should be amazed if Sturzenegger could not get them.

MR. WILSON: You can't compel Sturzenegger to produce them.

THE COURT: If I can't, then I am wrong.

203 MR. WILSON: Sturzenegger is not a plaintiff.

THE COURT: In the Uebersee case they are disregarding a lot of that. I am versed in the same law you argue, but they go through to find out what is the control, what are the realities of the matter. Surely, a corporation is different from its officers, but we do not set up those fictions when we want to get evidence.

MR. WILSON: If Your Honor please, Your Honor is confusing two things. It is not a question of whether you can reach the records of Chemie through Mr. Sturzenegger. This is a question of whether you can reach the records of Sturzenegger & Company through Chemie.

THE COURT: That is right.

MR. WILSON: You have no evidence before you, you have no justification for a situation before you, that you should direct Chemie to produce the records of Sturzenegger.

229 **Transcript of Hearing Before Judge Morris, November 9, 1949.**

240 Mr. Wilson: . . . On the following Monday afternoon, and now the days become very crucial—that would be the 31st day of October 1949, Mr. Whiteford and I met with the Attorney General alone and we were with him approximately a half an hour or 35 minutes and near the conclusion of that conference Mr. Whiteford stated to the Attorney General that this problem of the Sturzenegger deposition is still hanging around our necks. Isn't there some way that we can suspend this further. The Attorney General's response to this at that time was that there was a memorandum which he had received from Mr. Baynton, Mr. Baynton sitting at the trial table is now acting alien property custodian, and the memorandum from Mr. Baynton was with respect to taking certain action in the actions in this case, and as he expressed it to Mr. Whiteford, having to do with the Sturzenegger deposition and he said, "Cannot something be done about this?" In that memorandum to Mr. Baynton that was the impression he conveyed to us.

We then communicated with Mr. Bazelon who was still in office and thereafter on the following day, Tuesday, I personally called upon Mr. Baynton around 12:30 in the afternoon to discuss the contents of that memorandum. That memorandum had not been received by Mr. Baynton but that

241 memorandum did show up on the morning of Wednesday. On Wednesday, I don't know the hour, but I had a transatlantic call with our client Wednesday morning—and this is important, sometime around eleven o'clock. I had a telephone call to Mr. Baynton in which he told me that the memorandum—that we had misunderstood the situation, and the notation "Can't something be done about this" was opposite another item, and that he

insisted on going forward with the Sturzenegger deposition.

As a result of that there was another conversation during that day between Mr. Whiteford and the Attorney General, as a result of which Mr. Whiteford communicated with Mr. Baynton that we had reason to entertain still the hope that some solution would be made for the suspension of the Sturzenegger deposition.

Mr. Baynton called me before four and five o'clock in the afternoon of Wednesday and informed me that the deposition would have to go on on the 8th.

That was communicated to our client that there should be no further postponement. Now that was on Wednesday, the 2nd day of November.

THE COURT: A week ago.

MR. WILSON: Yes, sir.

On the morning of Thursday we received a cable from our client which we attached to the motion for the postponement

242 of the deposition, reading as follows:

> "Sturzenegger's departure Friday impossible according to decision by his doctor. According to first information he must undergo medical treatment for several weeks. Please cable instructions about formalities regarding deposition."

On the following morning we cabled to our client. A copy of that cable is likewise attached to the motion—and incidentally on the following morning almost simultaneously with the dispatch of the cable I prepared and served this motion on Mr. Schwartz around noontime of Friday the 4th of November.

Our cable said:

> "We have your cable 3rd regarding Dr. Sturzenegger. Please have his physician cable us immediately describing in detail patient's physical condition also reasons disabling him from travel and testifying and prognosis. We shall serve upon Mr. Schwartz today

motion for postponement of deposition and present motion to court Monday morning. Physician's cable certificate should be in our hands during weekend so that we may have it for the Judge Monday morning."

On Saturday afternoon we received a cable, the original of which I wish to file in the record of this case at this time.

243 Copies of this cable have been supplied to all interested counsel. I communicated by telephone with Mr. Schwartz about six o'clock Saturday afternoon, reading him the contents of this cable, and asking him if he would like me to dictate it to him over the phone or otherwise communicate with him about it and he said, he thanked me and said that was sufficient for the moment.

This cable came from Badenaargau in Switzerland, a town situated between Basle and Zurich in Switzerland.

This cable is as follows:

"Dr. Sturzenegger stays at Baden best known Swiss Spa undergoing treatment by distinguished specialist Joseph Markwalder M.D Phil D who testified following medical certificate Dr. Sturzenegger consulted Dr. Markwalder in September 49 for generalized chronical muscular rheumatism actually Dr. Sturzenegger suffers from an acute attack of sciatica on the right side combined with myalgia of the long muscles of the back the acute state of Dr. Sturzenegger's illness excludes any travellings for the time being. Another medical report follows November the 15th."

288 Mr. Schwartz: May I make a general observation, Plus

289 the time that this may take and that is terribly significant too, your Honor, for this reason, your Honor we fear that what this is leading up to is the regretful resignation of Mr. Sturzenegger from the Board of the plaintiff, and then the plaintiff will say to this court, "We are sorry, but you have no right to require us to produce

Dr. Sturzenegger, he is not our director, we have no control over him."

Now, your Honor, we think that would be a flagrant violation of the order of the court.

Once it is accomplished some damage will be done, so may I please, your Honor, if it is——

THE COURT: Well, there are several answers to the suggestion you make. I mean once he has been ordered to give his deposition I am quite sure that either the plaintiff —I am not quite sure that either the plaintiff or the doctor are at liberty to rearrange their relationship so as to permit that.

MR. SCHWARTZ: We would have decided views on that.

THE COURT: I mean, I don't think you can be quite so easily frustrated as you seem to fear you will be.

* * *

Filed Jan. 5, 1950. Harry M. Hull, Clerk.

294 **Transcript of Hearing Before Judge Morris, November 17, 1949.**

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300 THE COURT: It is very pleasing to the Court to notice the excellent cooperation between counsel, and I trust that it will lead to a very satisfactory result. I think it is really encumbent upon your man to even suffer a little pain and discomfort in view of the history of the delays——

MR. WILSON: Yes, sir.

THE COURT: About the taking of his deposition.

MR. WILSON: As a layman, I take the interpretation of it to mean that he should be here by the end of the month under this program.

THE COURT: As a past victim of Sciatica I take the same view.

* * *

Filed Jan. 5, 1950. Harry M. Hull, Clerk.

302 **Transcript of Hearing Before Judge Morris, November 21, 1949.**

303 THE COURT: All right, gentlemen, you may proceed.

MR. SCHWARTZ: If you will recall, your Honor, you kindly let this go over until Monday because the Swiss doctor appointed by the Consul has not made his report and we expected the examination to take place on Thursday and that we would get word of it on Friday.

THE COURT: That is correct.

MR. SCHWARTZ: We have an informal wire summarizing the result of the examination. Would you like me to read it or would you prefer to look at it as I read it.

THE COURT: Either way.

MR. SCHWARTZ: This wire is in form from the Minister to the Secretary of State, but it is actually a message for Justice from Dougherty, a representative the Department of Justice has in Munich. This message reads as follows:

> "Doctors Eggdr and Luthy have advised me informally that Luthy's examination objectively shows Sturzenegger suffering from disc hernia with attendant sciatica symptoms. Following statement dictated in presence of and approved by Luthy:
>
> "Dr. Luthy examined Dr. Sturzenegger November 17 in Baden, Aargau. Patient was in bed. Examination revealed clear-cut case of disc hernia, diagnosis based on objective symptoms. According to case history, hernia slipped
>
> 304 approximately November 1. Patient's physician saw him immediately after and advised cure in Baden. Patient proceeded to Baden November 3, was kept in bed since that date, present condition much improved. Dr. Luthy does not think it would be advisable for patient to travel before three to four weeks from today. Formal medical report probably ready November 21-22 and will be forwarded direct from Bern airmail."
>
> "I am leaving for Munich today."

That is the end.

THE COURT: Well, that development is a bit different from the information we had which indicated there was no disc hernia.

MR. SCHWARTZ: That is right.

THE COURT: Now there you have got something objective if it is reflected by X-ray examination or something——

MR. SCHWARTZ: Right, sir.

THE COURT: I am glad to know that the prognosis is that he will be able to travel within that period of time because it could be quite severe.

MR. SCHWARTZ: If your Honor will recall even that prognosis as to ability to travel seems somewhat to differ with this last report of patient's doctor, Dr. Staub, who
305 on the 11th examined the patient and found—he stated flatly there was no evidence of disc hernia.

THE COURT: That is correct.

MR. SCHWARTZ: He found neuritis, with sciatica symptoms, and so forth. Plaintiff's Dr. Markwalder, made an examination on the 15th and he thought—I think it appears that he would be able, if no unusual developments occurred, and with the usual treatment, in three weeks, which would be three weeks from the beginning of the month, and that he hoped the patient could endure travel, and to the contrary apparently we have this summary report which says flatly the patient has a disc hernia, and gives three to four weeks from today, which is quite substantially different.

THE COURT: It is longer, but he states it is a fact that there is a dislocated disc which I would suppose would prolong the acute situation longer than would be the case if it was just a semi-refractory process that was pressing on the sciatic nerve.

MR. SCHWARTZ: We are frankly rather somewhat confused because the patient seems to be somewhat improved and has been steadily improving. Neither of Plaintiff's doctors found evidence of disc hernia, but we have a wire which states flatly there is evidence of disc hernia and this

doctor says in his conclusion there is a clear-cut case of disc hernia.

THE COURT: With all due respect to the medical pro-

306 fession, and it is a very great profession that has ministered to the needs of human beings more than almost any other service, one has to recognize that it is far from an exact science, their contentions to the contrary notwithstanding, and I am not too much amazed at a difference of thought in the matter.

MR. SCHWARTZ: We have thought, your Honor, that since this was merely a tentative report it might be appropriate for us to wait for a full one, which would undoubtedly have some of the evidence on which the confusion is based, whether or not he had arthritic symptoms or something like that and we would like to give it to your Honor and give our opponents an opportunity to make a suggestion as to the course of the postponement.

THE COURT: Let us see what Mr. Wilson has to say. I am sure he is anxious to do everything he can to get the matter straightened out.

MR. WILSON: If I felt this morning, as if I had been somewhat purified by this transaction. If you will remember our client was accused of perpetrating a plain fraud upon this Court,——

THE COURT: Mr. Wilson, while that is not an awful pleasant thing to be accused of, the history is one which causes zealous and diligent representatives of the Department of Justice to feel as if they had some grounds for suspicion,

307 you will have to concede——

MR. WILSON: I have never discussed in detail Mr. Schwartz' affidavit about the history as I would like to if it ever came to that point, because I feel that this motion to dismiss our complaint for failure of Sturzenegger to appear was an unwarranted move under the circumstances.

THE COURT: Well, Mr. Wilson, that is a circumstance a bridge I would never have to cross until I get to it and I

ing doing everything I can think of to keep from ever getting to it.

Mr. Wilson: I appreciate that. I am simply explaining why I feel so much better about the situation this morning.

The Court: I am certainly happy that you do.

Mr. Wilson: Yes. I take it that Dr. Markwalder—if we take the date that he gave, the 15th of the month, he said Sturzenegger would be able to endure flight by the end of the month; if we take the estimate of Dr. Luthy which Mr. Schwartz has just referred to; three to four weeks from last week, would be something around the 15th of December.

Now I want, as your Honor very correctly stated, and accurately so, I want to do the proper thing in this situation.

The Court: I know you do.

Mr. Wilson: I am suggesting, and I have an order because Mr. Schwartz told me of this cable Friday evening—

308 I knew of it in advance this morning—I drew an order leaving the date blank, but I am suggesting at this moment—although I want to make another suggestion before I sit down—that your Honor might put in there December 5th, which would be Monday following the end of November as a date for the resumption of the Sturzenegger deposition, with the proviso that it be left to the plaintiff to apply for further postponement if the witness's health does not permit him to appear at that time. In other words, I don't want to grasp at every technical situation here. Dr. Markwalder's estimate was the end of November. As your Honor said, he did not find a disc hernia. Dr. Luthy has found a disc hernia and suggested a date which is about the 15th of December.

Now it may be that he is in error and that Dr. Markwalder is correct that there is not any disc hernia. I hope that Dr. Sturzenegger will be able to travel in time to be

here, for example, on the 5th, which, as I say, is the first Monday after the end of November. Your Honor might consider that.

Your Honor might also consider—and this is the second suggestion I am about to make, that if it should develop that if Dr. Luthy's examination and report to your Honor this morning is the accurate one and that Dr. Sturzenegger would not be in a position to travel before, let us say the 15th—your Honor might then consider the intervening Christmas period and the matter might then go over until

309 after the first of the year.

Now I want to do this thing properly, and if your Honor would like to postpone it until the 5th of December with this proviso, we might make representations to your Honor again, in view of Dr. Luthy's diagnosis, why, that would be my suggestion, but certainly I shall be alert to the situation, and if, as we approach the 5th of December—assuming that your Honor adopts my suggestion, I might be obliged to make further report to the Court based upon Dr. Luthy's estimate.

THE COURT: How long do you think the deposition will take when we get started?

MR. SCHWARTZ: Your Honor, I would think they would be very substantial. As your Honor recalls——

THE COURT: I do in a general way——

MR. SCHWARTZ: They were very substantial and most detailed.

THE COURT: I gathered that, but in point of time would it be possible to give an estimate like the doctors are trying to do?

MR. SCHWARTZ: At one time when Judge Laws was thinking of interrupting the deposition, I expressed my view—out of the air I must admit—and figured on a month. Since then, of course, many things have changed and the witness required to answer a type of question which may very ma-

310 terially increase the amount of ground to be covered on his personal banking for I. G. Farben. I would certainly say upwards of a month, your Honor.

THE COURT: Well, of course, I can fix a time on the showing that we have before us, but I really believe that the safest thing to do would be to fix the 12th, but there you have such a short time before the Christmas holidays, and I take it that your people will want to take advantage of the Christmas holidays.

MR. SCHWARTZ: Your Honor, when the question of the sequence of this evidence was being discussed some weeks ago and the question of the holidays came up and Mr. Wilson suggested that he hoped that he could have the holidays for his client, I said, "Of course you can take it for granted that we are not going to do anything in this case over the holidays and if you desire two or three weeks adjournment during that period, it will, of course, be granted."

Since then, your Honor time has been running against us, and if we could, without being unreasonably unpleasant, we would not desire to be gracious. You will recall that we were gracious for several months. Now the witness takes ill, and we would like to avoid being gracious if we possibly can, your Honor.

THE COURT: I don't want to assist you in not being gracious. I think that this situation commends itself. I
311 feel that the fact that even lately there has been a laudible spirit of amiability breaking forth tending to the same result.

MR. SCHWARTZ: On the general question of fixing the time and upon the alertness to present to the Court reason for extension, let's be reasonable. Your Honor, if the patient has a disc hernia, he can probably suffer with it almost indefinitely, or he can be operated on, or he can do something like that. If he suffers with it, it may be that he will suffer indefinitely, and if the plaintiff is to be alert to ask further extensions should not the plaintiff be alert

as soon as possible and should not this situation shift the burden somewhat, and should not the plaintiff consult as many surgeons and experts to clear doubts of what this prognosis is going to be?

THE COURT: Oh, well, I would think so if there was reasonable question as to his stalling in the matter, but it seems to me pretty clear that the fellow has had something wrong with him.

MR. SCHWARTZ: It certainly does, but your Honor, we cannot come to that view merely on suspicion.

THE COURT: I think you were justified in coming to that mind.

MR. SCHWARTZ: Thank you, and if you tell us that, we are very glad to have you say it.

312 THE COURT: And by the same token I don't think the man should be made to travel if he were actually suffering——

MR. SCHWARTZ: It would be unthinkable——

THE COURT: Wouldn't it probably simplify the thing, even though you have to swallow hard in saying it, we will let the thing go over until the first Monday after the first of the year.

MR. SCHWARTZ: May we have a moment, please.

THE COURT: I will give you five. I will take a recess and you really think about that.

(Brief recess, after which the hearing was resumed.)

MR. SCHWARTZ: Not only have I consulted with Mr. Baynton, my superior, but I have chatted with Mr. Wilson for a moment and I think we are perfectly agreed on the subject of the postponement, but I think I should mention to your Honor that as I understand it, since this does not permit the case to move forward that it be without prejudice to any request we may make for further witnesses——

THE COURT: Of course.

MR. SCHWARTZ: Mr. Wilson said it was implicit.

THE COURT: I think it is. I think it is a very happy solution, which will give the various techniques an opportunity

to perform in the matter and gets him in an air-worthy condition. I think we will find that it will work out. I feel, on the other hand, that you have impressed
313 upon him the necessity of doing everything that is humanly possible to accomplish his needed appearance.

MR. WILSON: I am trying seriously to overcome any charge, no matter how unfair, of stalling in this situation. There is not any effort to stall and I know it——

THE COURT: There is none on your part.

MR. WILSON: No, and not even on the part of my client.

THE COURT: I am beginning to believe myself that this is not that sort of thing. I still am faced with the proposition that in the background—if I have been correctly informed and while I have not been fully and adequately informed on the history of the case it is not surprising that there was a suspicion that it was, but no great harm has been done by suspicion, if we don't act on it.

MR. WILSON: Those words in the motion, if the Court please, that the claim is—and I am referring to his complaint—fraud upon the Court, is something that I just don't like posterity to read in a case in which I am involved.

THE COURT: I very much doubt if posterity will bother with it, if I am any fair judge of such a situation, and once upon a time I had to do with a great many alien property cases.

The files contain such an enormous and unforgettable proportions that I think posterity will concern itself with
314 ~~some~~thing more easily masticated.

MR. WILSON: May I say those files contain also enormous and unforgivable accusations in a great many cases too.

THE COURT: Possibly so, files frequently do.

MR. WILSON: If your Honor please, would your Honor like now an order submitted which simply gives the date without the proviso.

THE COURT: Well, I think so. I don't want any further applications for postponements. Now I think we have agreed to a period sufficient for him to travel. Now, if the plan changes we will add to it.

MR. WILSON: Very well. If your Honor please, I will submit an order which will stop with the date, some early date in January that we may agree upon.

THE COURT: We have been talking about Mondays, January 1950, the second is Monday.

MR. SCHWARTZ: We won't press for the 2nd, your Honor, how about the 9th?

THE COURT: Let's make it the 9th and then everyone will be happy. He won't ever miss New Year's Day—is that a great event in Switzerland? I am learning more about Switzerland in this case than I ever dreamed of before.

MR. WILSON: In many respects the Swiss are not unlike the Americans.

315 THE COURT: I think it is one of the most delightful countries imaginable. I cannot quite grasp the hard boiled attitude that has been represented to me about the way they treat foreigners.

MR. WILSON: Mr. Schwartz is not always gracious, your Honor——

THE COURT: Isn't he?

MR. WILSON: No, sir. There have been some hard boiled attitudes on both sides in this case.

THE COURT: Let's make it the 9th.

MR. WILSON: Your Honor, may I file this report from Dr. Markwalder—I have not heard Mr. Schwartz withdraw his motion to dismiss this case. If he is not going to do it, may I present the Court with an order denying the motion to dismiss.

MR. SCHWARTZ: I hadn't thought of it a moment, your Honor.

THE COURT: Aren't we feeling our way along in this thing pretty reasonably?

315

MR. WILSON: Your Honor, on the record you are granting our motion for postponement; there is a cross motion to dismiss.

THE COURT: I will dismiss it then with leave to renew it if occasion justifies.

MR. SCHWARTZ: I would think that would be implicit.

316 MR. WILSON: I would regard that as implicit.

THE COURT: I would too. Suppose I sign them both at the same time. Will you prepare the other order?

MR. WILSON: I will send the other one up, your Honor.

THE COURT: Mr. Watt, will you take custody of it—let that be withdrawn.

MR. WILSON: If the Court please, in order to complete the file I have received a signed report from Dr. Markwalder, which is a confirmation of his last cable.

THE COURT: Let it be filed together with the airmail confirmation of this cable.

MR. SCHWARTZ: That is still to come.

THE COURT: Yes.

MR. SCHWARTZ: Thank you.

Filed Feb. 20, 1950. Harry M. Hull, Clerk.

359 **Transcript of Hearing Before Judge Bailey, January 9, 1950.**

360 MR. WILSON: . . . This morning, between 10 and 11 o'clock, the Government began the resumption of the deposition of one Hans Sturzenegger, a director and an officer of the plaintiff corporation. That deposition had been begun—it was a discovery deposition of the Government—last February, and was suspended by Judge Laws during the month of February, and resumed again, as I say, pursuant to order of court.

The deposition was begun in the first instance pursuant

361 to a notice served upon me as counsel for the plaintiff, and without subpoena upon Sturzenegger, but on a theory that he was an officer or managing agent of the plaintiff.

There was a series of questions having to do with the affairs of Mr. Sturzenegger's own banking business, which is a different organization from the plaintiff, although having certain interrelationships, and the questions were being propounded to him about the affairs of that partnership and of Mr. Sturzenegger himself. We objected to those questions and declined to answer them, and it was that matter which was presented to Your Honor in the fall on a motion by the Government to compel answer.

At that time our sole objection urged before Your Honor, and the sole objection which we had made at the hearing, was that those questions were outside the scope of the notice. Your Honor ruled against our position and signed the order on the second day, I think it is, of November of 1949, reciting that, upon consideration of our opposition to the motion on the ground that the matters were outside the scope of the notice, and after hearing argument, Your Honor overruled our position and ordered the witness to answer those questions.

We had no objection before Your Honor, and we made no objection at the hearing, to the witness answering the questions upon the ground that to answer them would violate certain Swiss secrecy laws, penal and civil in character.

362 When the deposition was resumed this morning, very early I announced to Mr. Schwartz that I would have some preliminary statements to make, and I made them, and I said that I would have some more, perhaps, as he progressed; and so he promptly and soon got to the point where he was propounding these questions to the witness.

An issue arose between us, and I then made a statement on the record to the extent of saying that we wished to raise the question of privilege or secrecy. Mr. Schwartz

persisted in attempting to have the witness answer the questions. Instead, sir, and in order to show complete and absolute respect to the Court with respect to the Court's order, I insisted upon the suspension of the deposition that we might informally present this matter to the Court, it being our position that Your Honor's order compelling the answer overruled one objection which we made and that this is an objection not heretofore made to these questions.

Now, I said to Your Honor informally, in chambers, I think—maybe I said it to Judge Keech—that only over the weekend, from Friday night on, upon the arrival of Dr. Wehli, of Zurich—he is a Zurich lawyer—that we talk to counsel on the extent of the Swiss secrecy laws, both penal and civil in character; and so I told Mr. Schwartz I would like to suspend for the purpose of being sure that we were not going to be contemptuous, as we would not be, of course,

of the

363 Court's order. So the result is that we have gotten to the court house with no moving papers whatsoever with respect to this matter.

As I see it, I should like to file a formal motion asking Your Honor to state in your order of last November that it would be without prejudice to raising the additional objection.

THE COURT: Has not the Supreme Court held that even where, under a state law, a man would be subjected to a penalty, he cannot avail himself of that in a federal court? The Supreme Court, as I recall, in a decision by Judge Van Devanter, relied upon an old English case, in the case of somebody against the Kingdom of the Two Sicilies.

MR. WILSON: The Kingdom of the Two Sicilies, that is right.

THE COURT: Although he overlooked the fact that that case has been practically overruled. But still the Supreme Court opinion is the same.

MR. WILSON: May I answer that? My answer to that case and to a similar case proceeds in this way: The problem that was presented in the case of the Two Sicilies had

to do with the claim of the privilege against self-incrimination. The problem that we have here is two-fold. There is a relationship of banker and client, between the witness Sturzenegger as banker and certain of the individuals and entities whose

364 names are mentioned in these depositions. Thus we have a privilege which is similar but not identical to the lawyer and client, doctor and patient privilege, under the Swiss law.

Secondly, in Switzerland there is a penal statute, Article 273, which makes it a crime, even though committed extra-territorially, for a Swiss national to disclose business information to a foreign entity.

Now, it is a peculiar statute from an American's point of view, because I know of nothing similar to that. Our Swiss clients and Dr. Wehrli, who practice law in Zurich, are serious in the thought that Dr. Sturzenegger would be committing an offense against his sovereign in answering these questions.

THE COURT: He would be acting under duress, nevertheless.

MR. WILSON: Yes, Your Honor. I am aware of that situation.

Now, two things have occurred to me. I think the Two Sicilies case is a distinguishable situation from the one at bar, where the very act of answering is itself a violation of law.

I think, secondly—and this is an American lawyer's point of view, and I am not at all sure that it satisfies the Swiss point of view—that the duress that Your Honor just

365 spoke about would certainly be something which would be required, let us say, for some kind of protection.

Now, I do not mean for one moment that that is adequate protection to the Swiss, but our position is, if Your Honor

please, that we would like the opportunity to submit this question formally to the Court——

THE COURT: Well, you are submitting it now, and I do not think it makes much difference whether it is formal or informal.

MR. WILSON: All right, sir.

First let me tell Your Honor, if I may, about the Swiss law, because it divides itself, as I say, into two parts.

First, there is the Swiss penal statute, Article 273, to which I have alluded, which makes it a criminal offense; and I know of no authority in Switzerland—although I do not pretend to know what the authorities in Switzerland are upon the proposition—as to whether a disclosure in violation of that statute is subject to the defense of duress of the kind that would occur when a man answers a question pursuant to the order of Court.

Secondly, in Switzerland the banker-client—if I shall call the customer a client—privilege, while absolutely not in the same sense of a lawyer-client privilege, because of one thing that I will mention to Your Honor in a moment, is nevertheless of the same general character and requires a

366 waiver in that instance by the customer or client, as the waiver is required by the client in the lawyer-client relationship.

Under the Swiss law, as I have been advised by Dr. Wehli, in the Swiss courts a waiver is always available; and also the judge in the Swiss courts has the power to require an answer despite the lack of a waiver. The Swiss decisions are to the effect that that right, within the framework of the privilege, is one which may be exercised by the Swiss courts and not by tribunals outside.

The result of this consideration is that Mr. Sturzenegger runs the risk of being liable civilly to some of his clients—I say some because maybe, for practical considerations, some would not be able to assert any claim—but he runs the risk of civil liability to some of his clients for a dis-

closure, and as well he runs the risk as a Swiss citizen of violation of his country's penal statute in the respect in which I have stated.

Now, we think that the cases—one of which Your Honor referred to and others that I know the Government has had occasion to mention in the memorandum, that have not reached the point of a decision on that question—are distinguishable from this situation by reason, if for no other reason, of the penal character of the inhibition upon Mr. Sturzenegger.

Therefore, we appreciate the privilege of raising the

367 question. We think it is a serious question. And I am informed that the witness is in a very serious dilemma over the problems which can arise against him in Switzerland as against making disclosures of these business and banking secrets.

Now, in that posture of the matter, we ask two things of the Court. We ask that the Court enlarge its order of last November so that we may make this objection, and then we ask the Court to permit us, either formally, or to consider this as a motion under Rule 30(d) of the Federal Rules of Civil Procedure, to raise the objection of privilege under the situation.

Your Honor knows that Rule 26, and particularly 26(b), which is the section under which this deposition is taken, excuses the witness from making answers which are privileged; and I wish that Your Honor would consider allowing me to submit a memorandum of the Swiss law upon the subject, because, from the point of view of my clients, they are seriously concerned about the consequences of being required to answer in violation of their own country's precepts.

THE COURT: I have already passed upon the question as to whether these questions were relevant or not, and I am satisfied that they were.

On the other question, the objection you raise now, I

think matters of this kind, questions of evidence and
368 questions of privilege, are governed by the forum;
and, in addition to that, I think that that decision of the Supreme Court to which you referred—I do not recall the exact title of it; somebody against the Kingdom of the Two Sicilies—controls this case.

Now, I assume, for the purpose of this motion, that you have correctly stated the Swiss law; but whatever that law may be, even though it may subject the witness to a penalty or to criminal prosecution, I do not think this Court will permit a foreign law to obstruct it in ascertaining the facts in a case at issue before it; and I overrule your application, treating it as permissible even under my own ruling. In other words, I am not basing this upon the fact that I have already decided this case, because this particular matter I did not decide; but I do decide it now as I have indicated.

If an order is necessary, counsel will please prepare it and submit it to me tomorrow morning, if possible.

Filed Feb. 18, 1954. Harry M. Hull, Clerk.

414 Transcript of Proceedings Before Special Master, February 17, 1950.

418 Mr. Wilson: First, the plaintiff's name, which is written both in French and in German, was formerly abbreviated as "I. G. Chemie." Its name was changed in 1945, and it then took on a new nickname, so to speak, called "Interhandel." It is not a new corporation; it is simply a change in name. So that if we refer to the plaintiff as "Chemie" or "Interhandel," we are always talking about the same corporate entity.

It is a Swiss corporation domiciled in Basle, Switzerland.

428 Picking up the narrative of the facts, let me say that this story begins in 1920, and it involves a private banking company in Basle, Switzerland known as Ed. Greutert & Company. If your German is any good at all, you know that the diphthong "eu" becomes "oi," and the spelling is G-r-e-u-t-e-r-t.

Ed. Greutert & Company was a limited partnership which was established at Basle, Switzerland in 1920 under the following circumstances: Greutert had worked in Germany prior to the first world war and I guess through the first world war in a company known as Metallgesellschaft, or Metallbank. They are interrelated companies controlled by the Merton family in Germany.

429 In the early days, going back to about 1912 and 1913, Greutert had become a friend of Hermann Schmitz. Schmitz, you may recall, eventually became and certainly during World War II became the most prominent individual at the head of I. G. Farben in Germany. Greutert and Schmitz were close personal friends. I mention that because of things which will develop shortly.

The Merton family wished to establish some kind of a banking outfit outside of Germany after the first world war for the purpose of handling foreign business transactions, and so they set up Greutert as the unlimited partner in the partnership with an investment of 100,000 Swiss francs, let's say. It might be more or it might be less. I will give you the relative figures. Metallgesellschaft, a German corporation, became a limited partner with an investment of about 2,000,000 Swiss francs. The nominees of Metallgesellschaft were one of the Merton sons and a long-time employee and official of Metallgesellschaft named Euler.

The Master: You mean by "nominees" persons to represent Metallgesellschaft in the operation of the partnership?

Mr. Wilson: Precisely. A formal written partnership agreement was established, and from 1920 to about 1925

the partnership continued in that relationship. Swiss franc-wise it might have varied a little; but it was Greutert the

430 unlimited partner with the small investment and Metallgesellschaft, acting through Merton and Euler the limited partner with the large investment.

About that time, that which eventually became the Farben combine was gaining economic strength in Germany. I. G. Farben as such had not been created by 1925, I believe, although it was almost ready to be born in the period of 1925 and 1926. I. G. Farben became the successor to ten or a dozen German firms in the dye and chemical industry. Familiar names which will recur in this proceeding are as follows: A concern known as Ammoniakwerke; Badische Anilin und Sodafabriken; Frederich Bayer, which you will recognize as the aspirin parent; and other companies of less prominence than those. Ten or a dozen of those became the I. G. Farben combine in about 1926.

Around about this period the importance of Metallgesellschaft in the picture began to wane, and the importance of Hermann Schmitz and his interests began to be in ascendancy as far as the Greutert firm was concerned, with a result that around 1925 or 1926 a Swiss company known as Visca, which was under German influence but was a Swiss corporation, acquired a sleeping participation in the Greutert firm, a participation which has subsequently in its nature become a matter of controversy. It is known as "stille beteiligung."

431 From 1925 to about 1930 the Merton picture began to evaporate, you might say. So, about 1931 the Metallgesellschaft people were practically out of the picture, although they remained as nominees on the record until sometime in 1936. But beginning in around 1931 the Basle group, perhaps in connection with some German influence, began to acquire the principal participations in Greatert & Company. These participations at that point were of three different characters. Here was the Greutert

unlimited partnership status with the very small investment. Here was the Metallgesellschaft limited partnership with an investment of maybe 2,000,000 Swiss francs. And then there was this sleeping partner or sleeping participation which had been maybe 4,000,000 Swiss francs by Visca. I am not certain of the figures.

Around about 1928 I. G. Chemie was formed. It had not been born before that period of time. And I. G. Chemie was fired very greatly by the Hermann Schmitz influence. That same year or maybe the next year I. G. Chemie acquired either in its own name or in the name of nominees the General Aniline stock. They began to own it as early as 1929.

I should tell you that fairly simultaneously with the establishment of I. G. Chemie, Farben established the predecessor of General Aniline in New York, whose name was

432 American I. G. Chemical. American I. G. Chemical, your Honor, was the predecessor of General Aniline in the dye phase of the business. Agfa Ansco was the predecessor of that part of the General Aniline business which has to do with photographic supplies and the Ansco camera and film with which you are familiar. The name of the corporations was not changed until 1939 when they were all consolidated under General Aniline and Film. But the birth of American I. G. was fairly coincidental—maybe within 12 months—with the establishment of I. G. Chemie in Basle.

Hermann Schmitz was the first president of I. G. Chemie. Hermann Schmitz was the first president of General Aniline. Isn't that right?

MR. SCHWARTZ: Yes.

MR. WILSON: At about that time, as I said to you before, I. G. Chemie we claim became the owner of the General Aniline stock.

The first board of directors of I. G. Chemie consisted of Greutert, Schmitz, Dr. Felix Iselin, August Germann,

and maybe one or two others who no longer are there. Was Roesch a member of the board at the beginning?

Mr. McGraw: No.

Mr. Wilson: I don't think so.

Well, somewhere in the early 1930's the ownership of the Ed. Greutert & Company was reformed, let's say. These

433 three entities, these three kinds of ownership, were not changed. In other words, there has always since 1926 been the unlimited partner, the limited partner and the partner with the sleeping participation. But around about 1931 or somewhere around that or maybe later the situation became this:

Greutert continued to be the unlimited partner. Industriebank, a Swiss corporation, which is not an operating bank but is a sort of a holding company but which in the early days was under German influence as well, succeeded to the ownership of the limited partnership.

The Master: That is the Metall?

Mr. Wilson: Yes. And I. G. Chemie acquired the sleeping participation in Greutert which had formerly been the Visca participation if I remember correctly. Now, I may be wrong about the mechanics of this, but you will recognize from what I am saying, your Honor, that in Switzerland corporations may be partners because Industriebank is a corporation, Visca was a corporation, Metallgesellschaft was a corporation, and I. G. Chemie is a corporation. There are written contracts throughout the entire life of this picture beginning with 1920 or 1921 and coming up to the present time. There are written partnership contracts.

Chemie's status in the Sturzenegger firm has always been that of a sleeping participation. That becomes of vital

434 importance in certain controversies which we are having motionwise.

The Master: When did Sturzenegger take over the Greutert firm?

Mr. Wilson: Mr. Greutert died in the first days of September 1939, just about the time of the outbreak of war in Europe. Sturzenegger had come with the Greutert firm in the early '30's, and he was a first clerk and then became an unlimited partner. Was Sturzenegger ever a limited partner? No, Sturzenegger was a first clerk and then became an unlimited partner with Mr. Greutert I should say in 1936 or 1937. He may have become an unlimited partner with Mr. Greutert about that time, and he remained an unlimited partner until Greutert's death. Then he succeeded to the status of being the sole unlimited partner.

From the time of 1940 up until recently—when I say "recently" I mean this last summer, 1949—the status was that Sturzenegger was the unlimited partner again with the small investment, the Industriebank was the limited partner, and Chemie up until last summer had the sleeping participation.

441 Now, these gentlemen have prepared a chart which I will not endorse, but which may nevertheless be of some aid to you.

Mr. Schwartz: Is this what you are thinking of (indicating a chart)?

442 Mr. Wilson: Yes. Give it to the Master sometime. You will see the intertwining of Rigidor, Perpetua, Sopadep, and Industriebank in this Basle group.

Now, there is a character in the play who is no longer alive. His name is Carlo Mollwo. Mollwo died a year or so ago. Mollwo was a German; he eventually was a naturalized Swiss. He was closely connected with Mr. Greutert and had worked with Mr. Greutert over in Germany in the early days.

When the Metallgesellschaft interest was acquired by certain unnamed individuals, Mollwo was the nominee for that interest. So he became a character in this play rather early. He eventually became the operating head of Sopadep. The operating head of Industriebank is a man named

Theodore Wolfensperger. As a matter of fact, I think he is the sole director of Industriebank.

At or about the time or sometime after Molfwo's death, and I don't think this is important but it shapes out the facts, the ownership of Sopadep in preferred shares of Chemie was transferred by some program to Industriebank, so that today Industriebank is the owner of 100,000, all of the outstanding preferred shares of I. G. Chemie.

Now, related to the activities of the Sturzenegger firm more than to the activities of I. G. Chemie were a number of banking relationships with I. G. Farben. As a matter of

443 fact, these gentlemen call Sturzenegger & Company or Greutert & Company "Farben's banker outside of Germany," and they will contend that that relationship endured even during the war. On the other hand, there is a bank in Germany, in Berlin—it was in Berlin during the war—known as Laenderbank. Laenderbank has been described as the "house bank of Farben." It has been described so by these gentlemen and maybe some on my side have so described it.

Laenderbank is 64 per cent owned by Basle, by Chemie and Sturzenegger. I mention that because Laenderbank plays an important part in this whole picture, in these depositions.

Filed Feb. 18, 1954. Harry M. Hull, Clerk.

481 **Transcript of Proceedings Before Special Master, March 1, 1950.**

506 Mr. Wilson: Now, a very important phase of this case is the Chemie-Sturzenegger relationship. You will remember that the firm was formerly known as Greutert and Company and that the name was changed shortly after Mr. Greutert's death in 1939; the beginning of 1940, to Sturzenegger and Company; that this firm had

been formed in the year of 1920 with the aid of German capital, the source being Metallgesellschaft; and that there were from time to time three different kinds of participations in this firm: the partner with unlimited liability, the limited partner, and the sleeping partner or sleeping participation.

I don't mean to quibble over whether the correct translation of the German word is "Partner" or "participation." I think there we must look to substance more than we do to form.

Mr. Greutert throughout his lifetime—and that means as far as the firm is concerned from 1920 until his death—was a partner or the partner, as the case may be, with unlimited liability. Mr. Sturzenegger went with the firm

507 in the position of a clerk, prokurist, in 1931, and in 1938 he became a full partner in the sense of an unlimited partner. So that from 1938 until the time of Mr. Greutert's death there were two partners with unlimited liability. After Mr. Greutert's death Mr. Sturzenegger continued to be a partner and then the partner with unlimited liability.

In 1933 I. G. Chemie bought into the partnership. I use that phrase advisedly because it is my position that Chemie's ownership of a participation in the Greutert-Sturzenegger partnership was that of an investor and hardly that of a partner. It was at the time that Chemie wished to acquire an interest in the Greutert firm that Chemie made an agreement with Farben that Chemie's banking participations would not come under the terms of the Farben option, and there is an exchange of letters on that point.

Without dwelling too long on the details of the events in the earlier years, there came a time which we will call for purposes of convenience 1936 and 1937 when the Greutert firm consisted of the partner with unlimited liability—Mr. Greutert; the Industriebank, a Swiss corporation, be-

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ing the limited partners and the sleeping participation of I. G. Chemie. I will not try to give you the amounts of their respective investments. I will say to you that there are in existence definitive contracts between these entities reflecting their respective rights and liabilities.

508 It is our position that we resist most vigorously any claim of the Alien Property Office that anything which the banking firm Sturzenegger did or that Mr. Sturzenegger himself did was vicariously the act of Chemie itself. We are not resisting that upon purely technical legal grounds; we are resisting it upon substantial and moral grounds as well. We say the legal and technical grounds support us nevertheless, in that position. We say that an examination of these contracts, these partnership contracts, shows that the Chemie participation was nothing more than an investment in the company. The day-to-day operation was reposed exclusively in the partner with unlimited liability. The veto rights of Chemie as the investor were few and limited. And we are satisfied that we will be able to establish that Chemie is not in the role of a partner in the Greutert-Sturzenegger partnership but is in the role of a creditor with certain attributes which are natural for the position of a creditor to enjoy in such a situation.

On the other hand, Mr. Greutert had been one of the originators of I. G. Chemie, one of its several first directors, and he remained in a dominant position in I. G. Chemie to the time of his death. Mr. Sturzenegger succeeded to the membership on the board that had been Mr. Greutert's shortly after Mr. Greutert's death and remained a director of I. G. Chemie and does remain one to this day.

509 Now, as far as the Industriebank is concerned, which is a limited partner of Sturzenegger, we dispute any claim that Mr. Sturzenegger controls Industriebank. I think the records show that Mr. Sturzenegger has an investment equivalent to 725,000 Swiss francs in Industriebank out of 5,000,000 Swiss francs nominal value of the

total capitalization. The largest shareholder of Industriebank is another Swiss corporation known as Rigidor. And, if my notes are correct, Mr. Sturzenegger does not have a participation directly in Rigidor.

An option right on the Rigidor shares runs in favor of Perpetua, another Swiss corporation, whose capitalization is 1,000,000 Swiss francs. Sturzenegger and Company has an investment of 700,000 Swiss francs in that situation. Sopadep is the owner of the remaining outstanding shares of Perpetua. On the other hand, Sopadep certainly up until the time of Mr. Mollwo's death—and I am speaking with respect to Sopadep after that time—was controlled by Mr. Mollwo with Perpetua occupying an ownership of 275,000 Swiss francs nominal value out of 1,000,000.

We deny and dispute and contest most vigorously, as I think I said before but which I repeat for the purpose of being sure that I frame this issue, the contention of the Government that Sturzenegger is the alter ego of Chemie or that Chemie is the alter ego of Sturzenegger.

* * * * *

514 For example, sir, Chemie had an investment of about ten per cent in Norsk Hydro, a plant in Oslo, Norway. Prior to Pearl Harbor Norsk Hydro wished to increase its capitalization. I think the theory of the Government is that under German occupation which had existed since April of 1940 if I am correct about that, or sometime about that, the capitalization of Norsk Hydro was sought to be increased as a step in the Germans' war potential, so the theory of the Alien Property Office undoubtedly is that we aided and abetted in that program if we, as we did, invested in the increased capitalization. Naturally, as an investor, we wished to maintain the same ratio of ownership in the increased capitalization that we had in the original capitalization, and, therefore, we subscribed to the additional shares which were some 90,000, I think, in quantity.

It was arranged to finance this purchase through the

three banks in Norway. You will remember that at this time we were not at war with Germany. Germany was occupying Norway. This is in the year 1940 and in the year 1941.

Strangely enough, as we got near chronologically to

515 Pearl Harbor—I think, to be exact, as of October 31, 1941—Chemie was obliged to exercise its rights as of that date. Frantic effort was made by Chemie to obtain the approval of the American Government to do this. This was brought about not only because the Consul General at Basle had theretofore shown an interest in various activities of Chemie but because of the investment of Chemie in General Aniline in New York and the cross-holding of General Aniline in I. G. Chemie.

There were numerous contacts with Mr. Sholes, the Consul General at Basle, by the officials of I. G Chemie, begging and pleading for a clearance to make this acqursition. Mr. Sholes informed these gentlemen that he was transmitting their request to Washington, and they waited and waited and nothing happened, and Chemie was obliged either to lose their rights or to exercise them, and so they exercised their rights.

Now, the exercise of these rights several days before Pearl Harbor necessitated certain banking transactions after Pearl Harbor—the making of payments, the payment of the loans—and these activities continued over until the year 1942. They were largely executed by one Gierlichs, a very important lawyer connected with Farben but acting in Chemie's behalf in this transaction. And these activities via Gierlichs, without the Swiss leaving Switzerland, were

516 for the sole purpose of preserving their investment position in one of their participations.

Filed Nov. 8, 1950. Harry M. Hull, Clerk.

600 MR. WILSON: . . . Now, it is true, if the Court please, that since August, 1949, Chemie has no longer been in any way connected with the Sturzenegger partnership. But don't let anyone give you the impression that I would have the temerity to stand before Your Honor and to say that for that reason the plaintiff is excused from the production of the Sturzenegger records. I can say with all candor as to my understanding of the Swiss law, that there has been a complete severance, unilaterally accepted, not by the connivance of the plaintiff but under the terms of the partnership contract, unilaterally accepted by the partnership with the unlimited responsibility and by the limited partner on one side of having bought out the Chemie interest in the Sturzenegger Company so that it no long has even a modicum of a stake. But I am not urging to Your Honor that that fact, and that fact alone, is an excuse why the plaintiff should not produce the records of the Sturzenegger partnership. I do say to the Court that when Your Honor imposed the order which you did in this case, and for years prior thereto and for a time subsequent thereto, the plaintiff still had some interest in the Sturzenegger firm, that the plaintiff had absolutely no control over the books and records of the Sturzenegger partnership.

612 THE COURT: With regard to the production, it may be when you get there those papers will show up. I have ordered the plaintiff to produce them—not Sturzenegger—and there may be some sanctions if he wouldn't. I am not going to tell you what they are now, because I don't know. We open the doors of this court to a Swiss corporation to come in to recover a great deal of money and if they can't cooperate by reason of the Swiss Secrecy

Laws, and get the facts here that are probably available to them, I don't know what we can do about it. But why isn't the way for me to handle this to let you go over there and examine those papers that you know they are going to produce, and then——

Mr. Schwartz: We are anticipating the problem.

The Court: Mr. Wilson indicates they haven't made up their minds. He may have a problem, but it may be solved. I don't think it is Sturzenegger. He may be in a predicament to let them see them but I would be very much surprised in the trial of this case if the plaintiff doesn't have a lot of those Sturzenegger papers.

I don't think the laws of a foreign country could be
613 such that one side can get them, and that is the Swiss corporation, and the other side can't. I don't know what I will do eventually.

Mr. Schwartz: If that is Your Honor's view, after hearing the argument, that is fine.

The Court: I think the motion ought to be overruled.

Mr. Schwartz: In other words, let us go and see what happens?

The Court: That has been my idea all along; and then I think it might be up to the plaintiff to show his bona fides and honest effort. If you show me any number of exhibits that they have gotten out of Sturzenegger and you haven't been able to get to see any of them—I don't know what we will do, but I think I have a guess—but on the other hand if Mr. Sturzenegger or the other people go to jail for what they do and have their reputations ruined, and can't get them, and make a bona fide effort to get them—that is the reservation I made, that if they have done everything they can to get them, and can't, then that is another proposition; but I do feel very definitely—I have studied this matter a long time; I have studied your partnership agreement, I know what you are talking about; you might be debarred from getting it out of the partnership agreement, but you might get it out of friendship.

I overrule both motions and let the matter stand as it

614 was. Is there any serious objection?

Mr. Schwartz: There most certainly is. Of course they wouldn't jail me because Your Honor would dismiss plaintiff's case if they jailed me——

The Court: Well, I can't imagine them jailing a Department of Justice lawyer; I would think the Secretary of State would do something. Well, we will let it stand.

Mr. Schwartz: I thank you.

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Filed Nov. 8, 1950. Harry M. Hull, Clerk.

615 **Transcript of Hearing Before Chief Judge Laws, June 22, 1950.**

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630 Mr. Wilson: If Your Honor please, the next motion is the motion to be relieved from that portion of the same order which requires Chemie to produce the records of Sturzenegger and Company.

Your Honor will remember a good deal about this phase of the controversy. Your Honor will remember that last year I resisted as strongly as I could Your Honor's inclination to put the burden upon the plaintiff to produce the Sturzenegger records. You know the arguments that I made at that time as to our inability to produce them, from a legal point of view.

Sometime this year—and I am stating this only for background and not because I think it is directly pertinent

631 to this problem today—Mr. Schwartz filed a motion relating to that order in which he asked that the Court require Chemie to produce the Sturzenegger records over here in the United States, because he said he feared that they would not produce them in Switzerland.

At the time that motion was made I filed a counter-motion in which I called attention to Your Honor's memorandum opinion which preceded the order of July 5, 1949,

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and in which Your Honor stated as follows, and I shall read Your Honor only eight lines:

> "As to plaintiff's claim that it is not shown to have possession, custody or control of the papers and documents sought to be inspected and copied, the Court finds a prima facie case of control by plaintiff is made out. If it develops that plaintiff, after bona fide efforts to obtain access to records of its subsidiaries, affiliates and others in which plaintiff has an interest, is unable to produce them as ordered, the question of whether further action should be taken by the Court may be considered."

If Your Honor please, based upon that section of Your Honor's ruling, I filed a counter-motion in which we asked to be relieved of the order at that time to produce the Sturzenegger records, and I pointed out the serious question

632 of secrecy under the Swiss laws and of the violation by Sturzenegger of the penal laws of Switzerland in this respect.

At the conclusion of both arguments Your Honor denied both motions, and Your Honor said, in effect, go on to Switzerland and inspect the documents which are available to you, and let this issue arise in its normal course.

THE COURT: And bring me back the facts at the end, after fully established and all the pictures. That is the way I feel about it now.

MR. WILSON: Let me say this. We tendered at that time, and we repeat the tender the willingness of the plaintiff to expose its records for this inspection, pursuant to Your Honor's order, and the records of a wholly-owned subsidiary, Osmon A. G., which is also mentioned in the order, and that attitude still exists with respect to those documents. In other words, there is no kind of declination or resistance of that portion of Your Honor's order.

Yesterday the Swiss Federal Attorney General issued a federal decree in which he seized and confiscated documents of Sturzenegger which are the subject of this in-

spection. The decree was transmitted through the State Department I presume to the Department of Justice, and is in a little more readable form than the cable form in which our copy appeared, as I appended it to our motion.

The decree says

633 the following:

"The Attorney General of Switzerland having taken cognizance of the order of"—

THE COURT: I read this. What I have in mind, Mr. Wilson, is this, and I have it rather definitely in my mind the same as I did the last time we talked about this, I don't think we ought to deal with this piecemeal. I think what we ought to do is let this order stand and go over there and then if this bona fide and completely controlling act of the Government of Switzerland, or the Attorney General if he is the person in power and there is testimony on the return of Swiss experts that he was, and if we have all the background of how this originated, and so forth, and whether Sturzenegger or your plaintiff had any part in it, or whether they didn't, after I get that whole story completely I think I will know what to do.

Then the question comes up to the Court's mind as to whether under the circumstances and in the light of the legislation we ought to permit this litigation to go ahead. Maybe we should; maybe he is perfectly innocent of any participation, but I don't think I ought to take it up piecemeal by cablegram.

MR. WILSON: Yes, Your Honor, I abide by Your Honor's judgment.

THE COURT: I feel very strongly about it. It is an

634 important matter. If the Government of Switzerland in its relations with the United States acts completely antagonistic to our procedures and rules here, and in the light of the fact that one of its federal courts has ordered certain procedures, pursuant to rules adopted by Congress, it may very well be that we will have to take a stand in it; maybe we won't. It may be the Government of

Switzerland, acting under its sovereign power, had a right to do it.

Now, whether the Attorney General can do it or not, I don't know. If the Attorney General is like our Attorney General, he doesn't have a status to do it; I mean he can't seize it. I have to have testimony. My own judgment is rather strong that, unless you show me authority to the contrary, I ought to let the order stand, and then at the end of the whole picture, if the Government is frustrated, then let the Government bring in a motion supported by a showing, and then you reply, and then probably have to spend a month studying it—certainly a few weeks; it is an important matter.

Mr. Wilson: I agree with Your Honor that it is a very important matter.

The Court: I don't think I ought to do it without any authentication or without any approach by way of the act that brought this about.

Mr. Wilson: Now, may I suggest, consistent with what

635 Your Honor says, that under those circumstances Your Honor may continue this motion until some future time?

The Court: I think I will put it in a little different manner. I will overrule it without prejudice as to the availability of these documents being considered at a future time. I think we had better get rid of it because I want this order to stand right now for them to produce. I want that unimpaired. Now, what the result is going to be is coming later.

Mr. Wilson: I can say in support of my position, but not in resistance of what Your Honor is suggesting, that I have submitted this matter to the court as promptly as we had information.

The Court: I am not making any point about that, it isn't the promptness, it is the incompleteness of the picture, and I think this order ought to stand unimpaired until the whole facts are fully developed. So that I am going to

overrule the motion, I don't mind saying, without prejudice to the subject matter being brought to the attention of the Court at some future time. That part is all right.

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Filed Feb. 18, 1954. Harry M. Hull, Clerk.

856 **Transcript of Proceedings Before Special Master, October 28, 1952.**

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870 Mr. Schwartz: Let's make a decision, your Honor. Will Mr. Wilson produce within the reasonable near future, at either his office or our office, for our copying and inspection, the documents that are found bearing the X numbers in our motion? Will he or won't he?

Mr. Wilson: Of course I will, your Honor.

Mr. Schwartz: That seems to settle that.

Mr. Wilson: Now, that has to be divided into two areas. I haven't got in my possession this group of 5620-9872. I think with one other exception—and I was just about to turn to it, relying on my memory for it at the moment, when Mr. Schwartz interrupted me—with that one exception I think I have got over here every other document that we referred to. Now, I don't want to be held literally to that, but I do want to subscribe to the idea that if we have the document and it is not claimed to be privileged it should be shown to Mr. Schwartz.

Mr. Schwartz: Will your Honor accept this kind of formula: Will your Honor let the parties tacitly make an order among

871 themselves that Mr. Wilson will produce in the reasonable future, depending on the exigencies of mailing and communication, every document bearing these numbers which he for any reason whatsoever wishes to produce, including those he has found? Let's argue the privileged things separately and the other things separately. In other words, a pro tanto production to the extent of

everything that is found that plaintiff desires to produce. Then we can check them off and know what is left.

Mr. Wilson: That is quite agreeable. As a matter of fact, I realize that an order is desirable, but I am quite willing to do that.

The Master: That is satisfactory to me.

Mr. Wilson: At some day within the next——

Mr. Schwartz: Thirty days.

Mr. Wilson: No, within the next week. Let's arrange this: I am going to be tied up tomorrow and I don't know how much longer in the oil cases. I would agree with you that directly after we have completed the arguments before Judge Pine—and I don't know whether that means the same afternoon or next morning—we can meet and I can let you have everything that I have got.

Mr. Schwartz: How about the things that you have found but which you do not have? Will you produce them within thirty days thereafter?

Mr. Wilson: I don't see any reason why they shouldn't be.

872 The Master: I just wanted to make the suggestion that in respect of the documents found but not here present in America I should think it would be better to bring over the physical documents instead of microfilming them or copying them, if it is possible to do it.

Mr. Schwartz: That is what we are talking of.

The Master: That is agreeable, Mr. Wilson?

Mr. Wilson: That is agreeable.

Mr. Schwartz: I have a couple of clarifying points. Without regard to any remarks that may have been added as to the nature of the document or what is in the document or what it is a copy of, anything which you have said in your answers is found you will produce under this agreement, except privileged?

Mr. Wilson: I don't know any reason at the moment——

Mr. Schwartz: When you say this is a copy of something or other, that will not be a reason why it is not produced?

MR. WILSON: No. I think I have all of those in my possession. You understand, Mr. Schwartz—and you must understand—this is not a simple thing; to carry these documents in my mind.

MR. SCHWARTZ: I am not trying to trick you, honestly, but the privileged things I recognize we must argue separately.

MR. WILSON: I believe that where I have said that I have found it or where we made an explanation and the claim of privilege is not being made, with the exception of this great
873 bulk which is not yet over here, and with the exception of one other group of a couple of hundred which I will refer to in a moment if I can find it, I think I have got all these other papers in my office.

MR. SCHWARTZ: If you don't have them, I assume you will get them within the thirty days agreed; but, for instance, where you have said of a document "haven't found," naturally it is covered by the agreement, right?

MR. WILSON: No question about it.

MR. SCHWARTZ: Where you have said of a document "Found. Bears no Chemie number," that is irrelevant, is it not? The document is found. You will produce it?

MR. WILSON: Yes.

MR. SCHWARTZ: Where you have said, "This has been found. It is a certain thing. It is a list. It is a compilation. It is this," the fact that it is or is not a certain thing will not matter?

MR. WILSON: That's right.

MR. SCHWARTZ: Of course, where you have said these numbers have now been found and are available for inspection, that is included. Where you have said, "This number is on a file jacket," will you produce the jacket?

MR. WILSON: Sure.

MR. SCHWARTZ: Where you have said that a certain document is an annex to another document, or it is probably a document

874 which is thus or thus, if you have found it your characterization of it will not matter?

MR. WILSON: No. I meant that to be helpful and not to be qualifying, Mr. Schwartz.

By the way, I think I have now found—and this is subject to a check that I can make at the office—in answers to Exhibit 2, on the first page, in the category of 1127-1357, "Extra copies of documents already furnished," I believe that is in the same situation as the so-called 4,200 or 5,000 documents.

MR. SCHWARTZ: Eleven one twenty-two?

MR. WILSON: No, the first page of answers to Exhibit 2. There are only four digits in the number that I gave—1127-1357. I believe I do not have those extra copies over here. That comes under the same understanding about the other.

MR. SCHWARTZ: May I comment for clarification?

MR. WILSON: You certainly may.

MR. SCHWARTZ: Where you have said of a group of documents, "This is B-159," will you furnish the document even though you say it is identical with the 159?

MR. WILSON: I believe I have that little group.

MR. SCHWARTZ: I mean to say that whether you have them or will get them in thirty days is not my point. I am only trying to clarify that your characterization of a found document will not prevent it from being produced.

875 THE MASTER: In other words, Mr. Wilson, to be perfectly clear about it, any document where you find the word "Found" will be produced within a short period if possible, and within the 30-day period if that is not possible.

MR. WILSON: The hesitancy I have in answering this particular question is due to a qualification in my mind which is unclear. I don't think I have hesitancy about any other item in all the papers. I just can't tell you offhand the source of my explanation about this little group. I had found that Mr. McGraw receipted for them on the inspec-

tion, and I was hopeful that that would be convincing to you.

Mr. Schwartz: That demonstrates the general point, your Honor. Mr. Wilson is referring to those documents at the opening of his answer to Exhibit 2. He says of a group of 214 to 216, "This is B157; this is B159; this is B158." We have naturally looked at the B documents. They do not bear that 800 number. So we naturally see that what is meant here is that this document is a duplicate of B157, B158.

Mr. Wilson: That is the reason I doubt seriously if I have got that set over here.

Mr. Schwartz: Will you get it within the thirty days?

Mr. Wilson: Yes.

Mr. Schwartz: There are other such things where the word "Found" does not appear but rather a statement, "This is Chemie number so and so." That means, of course, that they have found

876 it, and they say it is identical with Chemie number so and so.

The Master: I am sure Mr. Wilson will be willing to produce that.

Mr. Wilson: Certainly.

Mr. Schwartz: Of course, where there are descriptions of the kinds of documents—bills for mineral water, bills for telephone and telegraph, or newspaper clippings—even to say of course you have found them and they are such and such kinds of documents——

Mr. Wilson: I would include those in the five thousand that I haven't got over here. I haven't got any of that group of 5,600 to ninety-eight something.

Mr. Schwartz: That I think covers the principle of the found documents which Mr. Wilson undertakes to produce within thirty days from next Monday.

Mr. Wilson: I believe—and I will say this to the best of my recollection—that with the exception of the big group we are talking about, the exception of a couple of hundred

that I mentioned of my own volition, with the exception of this little queue of five, six, or seven numbers that I said Mr. McGraw had receipted for—I think anything else that indicates that we have got it, I have it over here.

Filed Jan. 14, 1953, Harry M. Hull, Clerk.

961 **Transcript of Hearings Before Chief Judge Laws, November 18, 1952.**

968 Mr. Wilson: . . . Your Honor said at one time—if I may digress a moment—if you found we were seeing the papers and the Government was not, you thought you would know what to do with the situation.

Mr. Schwartz and his colleagues have named some instances and developed them before the Master, which the Master disposed of in his report—named some instances in which some papers were made available by the Stinzenegger firm to the Interhandel firm. But always those papers were made available as well to the United States Government.

So that while those instances are being used by Mr. Schwartz to indicate some cooperation where cooperation was desirable, they are not instances where Interhandel

969 has seen papers that the Government has not seen.

Because in each case—and I will not bore Your Honor with the facts of those instances, but in each case the Government had access to the very set of papers we are talking about.

I repeat to Your Honor that the Stinzenegger papers are equally inaccessible to us in this case.

I do not want to branch over into an argument on the motion to dismiss any more than to say that I pointed out in our memorandum that we are actually far more seriously affected by this confiscation order than is the Government. The Government has gotten the Interhandel

papers, the counterparts of which would certainly be in the Sturzenegger files.

The Government, through its teams of investigators, who searched through Germany, Holland and France, and General Aniline & Film in the United States, has developed a huge library of documentary evidence, much of which I have seen and some of which—considerable of which represents counterparts of papers which Sturzenegger bank must of necessity have.

The Government can resort to secondary proof in the trial of this case. I have seen instances in the taking of the deposition of Mr. Sturzenegger where I badly needed and obtained in those days a record from the

970 Sturzenegger files—this was before the seizure order—in order to rebut and overcome and explain the attack which was made upon the plaintiff in the questioning by the gentlemen in the Department of Justice, of Mr. Sturzenegger when he was on the stand.

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1001 Mr. Schwartz: . . . We come here as a party litigant, saying that in order that justice may be done in this case we have a right to the facts. We must know all about the enemy taint of the Sturzenegger firm.

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Filed Jan. 14, 1953. Harry M. Hull, Clerk.

1020 **Transcript of Hearing Before Chief Judge Laws, November 19, 1952.**

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1027 Mr. Schwartz: . . . Let's look at the operations of these two companies. Chemie was founded in 1928. It seems perfectly clear that from 1928 to 1936 Chemie was just a thing in the drawer at Sturzenegger; what we call a desk drawer corporation. Nothing to be ashamed of. You organize a corporation for a particular business purpose.

For instance, Chemie had no premises. It had officers, of course, but it had no employees. It lived

1028 on the Greutert premises. It paid Greutert a management fee each year for managing its business. Its letters were therefore written by the Greutert people and signed by the Greutert people. Chemie had only a legal existence.

For instance, we found instances in plaintiff's files of letters between Greutert and Chemie in those days. They would be dictated on the same day by the same man. Mr. Greutert would dictate a letter from I. G. Chemie to his firm and then dictate a letter back to himself from Greutert to I. G. Chemie. And there are those two carbon copies, one an original and one a carbon copy, in the plaintiff's files.

In 1926 apparently Chemie had grown too big to be just a desk drawer sort of thing. They needed quarters and personnel. They moved around the corner, one house apart. They bought another villa, but there was an entrance through the back, a garden entrance between the two. Things remained substantially unchanged.

For instance, almost the first thing they did, they got a fifteen-year contract from the Telephone Company so they could have one switchboard for the two companies, interconnected, all that kind of thing.

Now, Mr. Sturzenegger was still only an employee of Mr. Greutert. He did not get on the I. G. Chemie board until 1940—1939 when Mr. Greutert died. But when
1029 Chemie moved out of his building around the corner, Mr. Sturzenegger continued to dictate letters for I. G. Chemie; not a member of the board; not an employee. He dictated Chemie's letters. They are in Chemie's files.

Oftentimes he would dictate a letter from himself, as a procurist in the Greutert firm to Chemie, and then vice versa from Chemie back to himself.

Chemie got mail, naturally, each morning, and like efficient business people they put a route slip on each piece of mail, as governments do or big organizations do. The mail was to be routed to five people, and their initials were

on this rubber stamp, and the five people could check it off when they read it, if they so desired.

Chemie had such a route slip. Two of the five people to whom the mail was to be routed were not its employees but Greutert's employees. One of those people was Mr. Sturzenegger. So customarily every morning if the clerk brought it around, as I suppose he should, if there was a rubber stamp on it, Mr. Sturzenegger received Chemie's mail ordinarily.

We cite all these things in our brief. They are capable of proof by the documents.

Now, as I say, Mr. Sturzenegger was not a member of the board. Yet he admitted on deposition that he would
1030 represent Chemie in its business. He was an agent de facto.

He admitted, too, that one of the files of his entities was occasionally in the office of the other, and vice versa.

Occasionally in plaintiff's records we see a note on the plaintiff's carbon copy, "Copy at Greutert's."

That is the physical layout of the two companies. They were two parts of a working relationship. No doubt about it.

Now, your Honor, here is one facet of their relationship that has always existed and continues today: Chemie is a holding company. It has lots of investments in stocks. It keeps none of its investments on its own premises. Greutert, later Sturzenegger, is its depositary. All of its assets are there.

To sum it up, the relations between the two were so close that when we were examining Mr. Sturzenegger as to whom he might have discussed certain transactions with, he said, "I might have discussed that with officers of Chemie."

That was a very revealing statement, because this transaction was one where in the middle of the war Mr. Sturzenegger got a phone call from the German Consulate to come down and get a letter. And he went down and he got a letter that had been sent by courier from Berlin, and it

1031 asked Mr. Sturzenegger to send $10,000,000 to Spain to the account of a certain Count Diminow, to be used to buy tin for the German Army.

That, of course, makes Mr. Sturzenegger an enemy of the United States. He was engaging in economic warfare against us.

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Filed Jan. 14, 1953. Harry M. Hull, Clerk.

1120 Transcript of Hearing Before Chief Judge Laws, November 24, 1952.

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1125 Mr. Wilson: . . . If Your Honor please, back in 1920 the Greutert banking partnership was formed in Basle, Switzerland. At that time Mr. Greutert possessed a small financial interest in the partnership—some 100,000 to 200,000 Swiss francs—small as compared to the rest of the investment.

The partnership was virtually set up by a German concern in Frankfurt named Metallgesellshaft, run by the Merton family.

The capital was put in by the Germans at that time, and while Greutert was the single partner with unlimited liability, and the managing partner, the financial interest and many prerogatives lay in the limited partnership which in fact was this German concern named Metallgesellshaft.

I shall not dwell too long on the history in the '20s of Greutert's company. I only say to Your Honor that the gentlemen from the Metallgesellshaft and the company itself descended in importance as the years passed in the

1126 '20s, and people affiliated with I. G. Farben ascended in importance. So when it came to about 1929 the Greutert partnership still had Mr. Greutert as the general partner, but the Metallgesellshaft people had vanished from the scene, and people connected with I. G. Farben had become financially interested in the partnership.

Now, if Your Honor please, one of the principal actors in the play from the point of view of I. G. Farben was Hermann Schmitz, who was chairman of the board of I. G. Farben, and at its inception was the president of I. G. Chemie. So in the late 1928 or 1929 I. G. Chemie was formed—a holding corporation in Basle, Switzerland.

At that time there were on the board some Swiss individuals; Dr. Felix Iselin, the present president of the company, was there almost from its inception.

Mr. August Germann, still a member of the board, was a member of the board practically at its inception.

Professor Fleiner, one of the leading educators of Switzerland and Germany, a Swiss himself, was on the board.

Hermann Schmitz was himself on the board, and there were several Germans on the board at that time.

Nearly simultaneously with the creation of I. G. Chemie in Switzerland in 1928 and '29, I. G. Farben
1127 created the predecessor to General Aniline & Film Corporation in this country. It was known as American I. G. Chemie Company. There was no secret about the fact that the Germans of Farben had sponsored both organizations.

By that time, or certainly within the next several years, Chemie had acquired a great deal of financial wealth. It purchased the shares of General Aniline, and so we find that I. G. Chemie became the owners of all of the outstanding B shares of General Aniline, and approximately 455,000 out of 525,000 A shares of General Aniline.

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1128 Now, between 1929 and 1933, the Greutert partnership changed internal complexion. No longer were the Germans interested, or investors in the Greutert partnership. By that time the limited partnership which had theretofore existed in favor, first of Metallgesellshaft, and then in favor of a concern known as Visca, a Swiss corporation but in the early years dominated by the Germans, that limited partnership in favor of the Germans

vanished and it became owned by Industriebank, a Swiss corporation, one of the organizations which has come to be known as a part of the Basle circle.

There around 1933, I. G. Chemie purchased an investment position in the Greutert partnership. It was not a general partner. It was not a limited partner. It had a position which in the German language was called a Stille-beteiligung which, according to opinions which we have, and which I called to Your Honor's attention on earlier occasions, does not represent more than an investor's position in an

1129 enterprise; not the position of control; not the position of direction.

And so, in or about the year 1933, I think it is fairly accurate to say that Mr. Greutert's general partnership interest in his company still was around 200,000 Swiss francs.

The Industriebank investment was about 4,000,000 Swiss francs.

The I. G. Chemie investment was about 4,000,000 Swiss francs.

Now, if the Court please, during these years beginning with 1929 and going up to 1939 and 1940, there was a fairly definite pattern of the relationships, businesswise, between I. G. Chemie and I. G. Farben. I am coming back to that in a moment.

I want to continue for a moment about the Greutert partnership, because shortly after its creation it became the subject of definitive agreements, copies of which are in the record of this case, some of which Your Honor has examined. It was spelled out literally what were the rights and liabilities and prerogatives and duties of these respective interests.

The general partner on the one hand, the managing partner, with a very small capital stake. The limited partner

1130 with less power as the general partner but with a large capital stake, and the sleeping participation

stake of I. G. Chemie, large dollarwise but from the point of view of control practically nil.

That is the way the situation continued over the years and into the war years, and up until 1949 when the end came to the position of I. G. Chemie in the Sturzenegger partnership which was the successor to the Greutert partnership.

Now, may I pursue a moment when the transition took place. War had been five days old in Europe, in September of 1939, when Mr. Greutert died. Thereafter Mr. Sturzenegger succeeded to the Greutert position as the general partner, the managing partner with unlimited liability and the small stake.

Industriebank continued with its large investment as a limited partner, and I. G. Chemie continued until during the war years the investment was decreased and decreased and decreased until at the time of the complete buy-out in the spring and summer of 1949 Chemie had then only an investment of about 1,250,000 Swiss francs in the Sturzenegger-Greutert partnership.

I pointed out to Your Honor on earlier occasions that there was such lack of control by the plaintiff over
1131 the Sturzenegger partnership that Chemie was not even permitted to examine the files and records of the partnership. The things over which Chemie could exercise any rights were virtually negligible.

We have opinions from two of the leading lawyers of Switzerland to the effect that that position was more akin to that of an investor, as I said to Your Honor before, than even the smallest degree of a partner.

Now I come back to the observation which I made a few minutes ago, to the pattern which existed between Chemie and Farben.

Chemie was the investor, the holding company. Farben was the operator.

Chemie owned the capital of General Aniline & Film Corporation in this country. It will be remembered that

it is 90 or 91 per cent of the stock of that corporation which is the chief property sought to be recovered by this lawsuit.

Farben, as the operator of a vast dye and chemical enterprise in Germany, was interested in the operational characteristics and features of General Aniline, as an outlet for their products, as an outlet for their patent. And so there were those two relationships moving in separate directions upon General Aniline; I. G. Chemie as the
1132 investor. I. G. Farben as the operator. Chemie's interest being virtually nil in the operation of the business. Farben's interest being virtually nil in the investments of the business.

I point out that pattern to Your Honor because it explains five or six other transactions.

Mr. Schwartz referred to the business in Paris during the war, known as Chimicom. And he accused Chemie of operating a business in German-occupied territory during the war.

There again is a small G. A. F., a small General Aniline & Film Corporation. Chemie owned the capital. Farben transacted the business.

Coming back to this—because Mr. Schwartz had something to say about it which I want to answer. Then there was a Norsk Hydro plant, Norsk hydroelectric plant in Norway. In this concern Chemie had a minority position. The Germans had a substantial position.

There again Chemie's interest was solely that of an investor. The Germans' interest was for production purposes.

These matters all preexisted the war, if the Court please. These acquisitions by Chemie began in 1929 with no ac-
quisitions, except one that I will mention in a
1133 qualified manner, after war broke out in Europe.

Mr. Schwartz referred to Winnica, the Polish dye concern, operated half by Farben and half by Kuhlman,

the great French dye trust, owned capital-wise, again, by Chemie, had been owned for some years as an investment.

Then we have certain corporations in Holland. The well known corporation of Voorindu. That is the abbreviated name for a very long Dutch name.

Another company in Holland was named Chemo, again an abbreviation for a long Dutch name.

Voorindu prior to the war and at all times was 100 per cent owned by I. G. Chemie. There again it was the investor in those enterprises. Some of the enterprises which were held by Voorindu were operated by I. G. Farben. Distinct areas of activity. Investment on the one hand; operation on the other.

A third company, the one to which Mr. Schwartz alluded on Wednesday, that was created, he said, at the time of the war—he meant, I am sure, to say at the time that war was breaking out in Europe, 1939. A concern which we call KMI, and which is spelled C-h-e-m-i-a-m-i-j, but which we call KMI.

According to our position we disagree strongly with Mr. Schwartz about this. KMI was owned not majority-
1134 wise by Basle, but minority-wise by Basle.

Then you have heard Mr. Schwartz speak of the Deutsche Laenderbank, a banking institution in Berlin which has been called the Farben bank.

There again the interest of Basle, the interest of the Greutert firm and of Chemie in the Laenderbank was about 66 or 67 per cent. The rest was owned by Germans. Not operated by Basle. Again, the investment only, distinct, separate and apart from the operational features.

1141 At the bottom of page [R. 1030] he [Mr. Schwartz] refers to Mr. Sturzenegger going to the German Consul in Basle to get a letter, and he went down and got a letter that had been sent by courier from Berlin, and it asked Mr. Sturzenegger to send $10,000,000 to Spain to the account of a certain Count Dinninow to be used to buy tin for the German Army.

Mr. Schwartz says:

1142 "That, of course, makes Mr. Sturzenegger an enemy of the United States. He was engaging in economic warfare against us."

I repeat to the Court—excuse me. He stops at that point, explaining the tin transaction. I repeat to the Court that that is a misrepresentation to Your Honor of that transaction, and I dwell on it only because of its high significance in the whole matter of these papers.

At the time Your Honor suspended the Sturzenegger deposition it had been going on for eleven or twelve days in 1950. We had not yet seen the Government's papers. Mr. Schwartz was interrogating Mr. Sturzenegger about this transaction, which is better known amongst us as the Escudos transaction. That is the medium of exchange in Portugal.

He was showing Mr. Sturzenegger some of the papers he had obtained out of Germany regarding the Escudos transaction—records which he had gotten from the Laenderbank and elsewhere in the files of Farben. As the examination of Mr. Sturzenegger was pursued, it began to appear, just as Mr. Schwartz has said to you here, that Mr. Sturzenegger was engaging in economic warfare against us. It had it appear that Sturzenegger consummated that transaction for the Germans.

I was alarmed, of course, with the development
1143 of that testimony at that time, and frantically we obtained explanations by cable and by telephone from Mr. Sturzenegger's bank, which found that Mr. Sturzenegger had rejected the transaction; that he had returned the money which had been remitted to him; that he had never agreed to carry through this transaction, not even tentatively; that the money arrived; he was a banker, and it was put to his credit, and as soon as he discovered what the transaction was he turned it back, and it went back through one of the great banks of Switzerland—which incidentally had a hand in the remittance eventually for

the purpose of tin. But not Mr. Sturzenegger. He had no part of it. He got out of the transaction completely before it started.

Now, we knew that from Mr. Sturzenegger's records. And astonishingly enough, when we made the inspection of the Government's records, they had that story too. Mr. Sturzenegger had only been interrogated about the papers which revolved around the inception of the transaction; only the papers which would muddy Mr. Sturzenegger, which would leave the implication that he was an enemy or was aiding the enemy. And when we examined the papers of the Department of Justice, they showed what we had learned to be the outcome of the transaction.

They, too, showed that Mr. Sturzenegger had
1144 rejected it. They, too, showed that he did not carry the deal through.

THE COURT: Did the Government see the Sturzenegger papers then?

MR. WILSON: You mean on the examination? I don't believe we had the papers here——

THE COURT: I understood you to say that the Sturzenegger papers showed also that he had rejected this transaction.

MR. WILSON: My recollection is that we got that by cable and telephone; that that is what the Sturzenegger papers showed.

In other words, Mr. Sturzenegger was on the stand, going back on the stand the next morning to make those explanations. We got them on the phone, as I remember.

Now, then, the Government had the other end of the transaction.

THE COURT: You see, the Government's position, I suppose, is that their papers might show one thing and Sturzenegger's another, I suppose.

MR. WILSON: How could it be on this transaction? They had the outcome of the transaction. They saw that Sturzenegger did not go through with the deal.

So when they say in their memorandum, "Only the Sturzenegger papers will show the following:" and they list

1157 five categories, the so-called Sturzenegger circle, which I say is a deliberate misnomer, but in any event the Sturzenegger circle consisting of Rigidor, Perpetur, Sopadep and Industriebank have their own records. It is not true to say that those records can only be gotten from Sturzenegger.

Secondly, they say only the Sturzenegger papers will show the Chemie stockholders. I say that is not so. I say that is not so for the reasons I have stated before. These gentlemen know that in the intervention of Kaufman in this case they claim to represent some 18,000 shares of Chemie stock.

The Alien Property office not only had information about the stockholders of I. G. Chemie, but in answer to an interrogatory by the Kaufman group they supplied to Kaufman page after page of names which purport to relate to the question of stockholdings in I. G. Chemie, of people who lived in Germany who had their shares deposited in Germany.

Their memorandum says that only the Sturzenegger papers will show the ownership and activities of Sturzenegger, the dominant stockholder of I. G. Chemie. Sturzenegger is not the dominant stockholder of I. G. Chemie, and you do not have to take my word for it. The dominant

1158 stockholder of I. G. Chemie is Industriebank, and previously Industriebank and Sopadep. Those are the records they want to see.

This theory that the Sturzenegger bank is the sole repository of all valuable information in this case is a pretext, obviously, for the purpose of selling Your Honor the idea of indispensability.

With 66,000 pieces of evidence relating to this case in the possession of the Government, with corroboration of a number of pieces of evidence from the depositions of Mr. Sturzenegger and Mr. Joseph Schmitz, it is just fan-

tastic for a man to stand before Your Honor and assert the absolute indispensability of the Sturzenegger records.

Their brief says:

> "Only the Sturzenegger papers will show, fourth, ownership of all of plaintiff's assets, and fifth, investments of plaintiff's assets."

There are interrelated phases. I say that there are many records of I. G. Chemie, and their books of account will show purchases and sales of securities.

With respect to the so-called consortia and secretariats, which I mentioned in my opening and which Mr. Schwartz mentioned, and which is mentioned in their brief, I said to Your Honor the other day that it seems

1159 to me that those are a logical basis for an application to the Swiss Federal Attorney under his invitation.

* * * * *

1169 Mr. Wilson: I am about to take up, page by page, Mr. Schwartz' argument of last Wednesday.

On page 5 of the transcript of Wednesday, which I note corresponds to page 102 of the transcript, he said:

> "We pressed him"—meaning Sturzenegger—"to give us one illustration of a customer who was in no wise connected with I. G. Farben. He could not."

Now, that needs the explanation that I am sure Mr. Schwartz in using the phrase "in no wise connected with I. G. Farben" means and not a member of the Basle circle, because various of the individuals who are Swiss and who are members of the Basle circle did have dealings with Sturzenegger.

So, if Your Honor came to read this at a later date, I think the phrase "no wise connected with I. G. Farben"

1170 must be read in the light of Mr. Schwartz' hypothesis, I am sure that he meant "and including the Basle circle as well."

* * * * *

1173 I remember that Mr. Schwartz made a great deal about the Chemie mail being routed to the people in the Sturzenegger bank by the route slip and route stamp.

Your Honor will remember that the reason you overruled my motion originally for the taking of the Sturzenegger deposition in Switzerland was because you found that Sturzenegger was a managing officer, within the purview of Rule 37. Managing officer, according to the by-laws meant someone with power to sign. Because Sturzenegger was a director, Greutert before him had been a director of Chemie, each of them had power to sign and did sign many letters. It wasn't unnatural that the Chemie mail should be routed amongst its directors, certainly who had power to sign.

The interesting converse has not been mentioned by Mr. Schwartz and that is the important converse here

1174 today. Were the Sturzenegger papers routed through Chemie? Because, after all, the problem here is not the production of the Chemie papers but the production of the Sturzenegger papers.

There is no evidence of the routing of the Sturzenegger papers through Chemie. There were three or four or five instances where letters or files of Sturzenegger were in the possession of Chemie, but they are isolated instances. There is no evidence that they evidenced any steady pattern, and I think you can count on one hand the number of files that are known to have gone that way.

So Mr. Schwartz failed, and must fail, to point out that conversely the Sturzenegger papers now sought here were routed through the office of the plaintiff, who is alleged to have had some kind of possession and control over them.

That reference to the routing of the mail and to the fact that Sturzenegger and Greutert were directors of Chemie with power to sign were prompted by comments

which Mr. Schwartz made on page 10, which is in fact page 107 of the complete transcript.

On page 11 Mr. Schwartz refers to the investments being kept on the Stürzenegger premises: a perfectly natural thing. The Stürzenegger premises have safe-keeping vaults.

1175 There is no evidence that the Chemie premises have anything more than the usual office vault. There is nothing sinister or even suspicious, I submit, about the Chemie securities being kept in the vaults in the Stürzenegger bank, which despite Mr. Schwartz' description of it as a villa is equipped with offices and has vaults.

On page 12, or 109, Mr. Schwartz refers to the Escudos transaction. I have said all I want to on that subject.

On page 13, which is page 110, there is a remark that may have some ambiguity:

> "This relationship with Farben continued with Chemie and Stürzenegger all during the '30s and into the war years."

That is an inaccurate generalization, Your Honor. That harks back to a reference on an earlier page where Mr. Schwartz indiscriminately referred to the triangle without any distinction between the various relationships. I submit that that statement leaves the impression of a general practice of relationship continuing between Chemie and Stürzenegger with Farben into the war years.

It is true the Norsk Hydro transaction was in the war years. It is true the purchase back by Farben of the Winnica investment was during the war years. It is true

1176 that the ownership of Chimicom continued during the war years. But those were simply preservation of investments, repayment of investments, investment of new funds to maintain the same proportion in the increased capital. I submit that they are not in and of themselves acts from which enemy taint could be derived.

On page 15 (page 112) there is the reference to Chimiepin. I am not sure that he calls it by name, but he says:

> "In Paris, all during the war, Your Honor, I. G. Chemie had a subsidiary. All during the war it was operating a business in enemy-occupied territory."

I say Chemie was not operating the business during the war.

I pointed out to Your Honor before, and the Joseph Schmitz deposition filed in this Court will plainly show, that the operation of the business was by Farben, one of Farben's subsidiaries; that what Chemie did was to own the stock of the company.

On the same page, 15, still painting with this broad brush which undoubtedly leaves certain impressions, and I am not at all surprised at the observation Your Honor made on page 29 that I opened with this morning, after having these things tossed at you in such broad language:

1177 "Another such joint relationship:" —says Mr. Schwartz on page 15— "In Berlin all during the war was a bank called Deutsch Laenderbank, again a private bank. It was in the same building as Farben's central finance organization.

"Who owned most of the stock in Deutsch Laenderbank? Farben and Sturzenegger together."

I think it means Chemie and Sturzenegger together.

> "So all during the war, Your Honor, they owned most of the stock in a bank in Berlin. What was this bank in Berlin? It was Farben's house bank. Mr. Greutert himself said that many years ago."

Now, that is the end of the discussion about the Laenderbank situation. That is an unfair way to state it, Your Honor.

I told Your Honor that the evidence shows, and the documents in the possession of the Government show, that not

a thing that was raised [was done] by the Swiss in regard to the management of the bank in Berlin after war broke out.

There is no evidence of any seeking of advice or consultation or anything of that sort. The bank was just simply run by the Germans, and Basle had this preexisting stock ownership of the bank.

1178 Now, on page 17 there is the reference to the South American transaction, and to the visit of the Germans before Pearl Harbor to endeavor to induce Sturzenegger to cloak for them in Latin America.

The fact is that Sturzenegger did not cloak for them in South America. The fact is that he mentioned somebody else's name, somebody named Auer, who proceeded to act for them. Sturzenegger had nothing further to do with the matter.

Filed Jan. 14, 1953. Harry M. Hull, Clerk.

1212 **Transcript of Hearing Before Chief Judge Laws, November 25, 1952.**

1301 THE COURT: Let me pursue that a little bit. You have answered me categorically, all right, but do you, notwithstanding that, argue in this, and you have it in your brief, that my position with regard to control has been further substantiated by evidence.

MR. SCHWARTZ: Yes, sir. And it is cited in great detail——

THE COURT: Has Mr. Wilson dealt with that too?

MR. SCHWARTZ: No, sir.

THE COURT: He did not answer that at all?

MR. SCHWARTZ: No. He has answered my argument from the transcript. He has not mentioned our brief. That is how he is able to contradict me so readily. Everything we have said factually is established by citations, and we are prepared to stand on our citations.

THE COURT: I think that might be a very important point, this control business.

1302 MR. SCHWARTZ: It is, Your Honor.

THE COURT: From the very beginning, I remember his argument that Mr. Sturzenegger was not a managing director in the sense of one here in America, and I do not remember all the matters that led me to conclude that the plaintiff had control, but I remember I did conclude it.

MR. SCHWARTZ: And all those and more are now set out again.

THE COURT: Of course, that is pretty much the heart of this point.

MR. SCHWARTZ: It is.

THE COURT: Because if I was mistaken about that, I cannot dismiss this case.

MR. SCHWARTZ: Of course, if you were mistaken it would be your duty to correct yourself.

THE COURT: That is right.

MR. SCHWARTZ: But we say not only were you right, but you were more right than you could possibly have known, because there has been a lot more evidence.

Take, for instance, the one point Mr. Wilson contradicted me on where he said:

"Mr. Schwartz makes much of the fact that Chemie's mail was routed to Mr. Sturzenegger."

You remember I said that one of the proofs of the

1303 intimacy of these two firms is that when I. G. Chemie moved away from Sturzenegger—you see, for six years of its life it was nothing but a desk in Sturzenegger's, and then it moved around the corner, and the first thing it did was to set up a telephone, a joint telephone with an interconnecting switchboard.

Then I said nothing changed. Mr. Sturzenegger would dictate letters from himself in the Grentort firm to himself in Chemie and then he dictated back, and the letters are right next to each other.

Then I said even Chemie's mail, this independent holding company, would be routed with a typical Army buck

slip route to five people, and there is a printed such slip on Chemie's correspondence. Two of those five people were not employees of I. G. Chemie. They were Greutert people around the corner, and one of those two is Mr. Sturzenegger.

Mr. Wilson contradicted me and said: "Well, that proves nothing, because Mr. Sturzenegger was a director of Chemie."

No, Your Honor. That was my point. This was four years before Mr. Sturzenegger became a director of Chemie. He was an employee of the banking house around the corner. Yet every morning all of I. G. Chemie's mail, presumably by this route slip, went to him. That shows the

1304 intimacy of the relation.

And then remember we set out the stock relationship, the partnership relationship, the physical relationship, the joint activities. They were joint in every case.

Does Your Honor recall the early days of the SEC and business of the securities affiliates of the banks? You know, that economic phenomena of the commercial bank which had a securities affiliate, which traded, and that susceptible of great abuse because things were done that the banking law frowned upon. That was one of the reasons that led to the Securities Act, and the Registration Act, and so forth. Some people went to jail for that.

Well, that phenomenon of the securities affiliates is the closest thing I could think of to describe the I. G. Chemie relation to Stirzenegger.

They dominated backwards, forwards and upside down. As I said, they are two parts of the same pocket. They are one and the same.

That is much more than control, Your Honor. That is identity.

Another thing, and this relates

THE COURT: These facts you are talking about now came out of the deposition of Sturzenegger?

Mr. Schwartz: And of the Swiss Government's.

1305 own reports. We have cited almost nothing in these first two sections except the Swiss Government statements—and Your Honor remembers Mr. Wilson wanted to stipulate those statements—Mr. Sturzenegger's statements on the stand, and we have cited a number of documents from plaintiff's files which we now have; three sources of proof that are indisputable.

I agree with Your Honor, control is the issue. The power of the Court is ample. The relevancy of the papers is clear. If these people are identical with Sturzenegger as we say they are, they cannot use a foreign law to frustrate American law.

Your Honor, I have one last plea. Do not commend us to the tender mercies of the Swiss Federal Attorney. That invitation, Your Honor, is designed to provide a road along which we can dance forever and a day. It is three and a half years since Your Honor ordered these papers to be produced.

You know, Your Honor, in terms of right to defend, time is also a factor. If a right to defend is granted only over ten years, it is not a right to defend. We have a right to defend this case and clear it out of this court. You should not let us spend ten years perfecting that right.

They have had three and a half years, Your Honor.

1306 Do you doubt that all this was intended, as plaintiff's own director advised them, so that there should be delay and delay and delay and delay, so that even the Americans would get tired?

* * * * * *

1311 Mr. Wilson: . . . You said this, and we quote you as saying this on April 15, 1950—this is not the beginning of a sentence:

". . . if they have done everything they can to get them and can't, then that is another proposition. But I do feel very definitely—I have studied this matter a long time. I have studied your partnership agreement. I know what you are talking about. You might be debarred from getting it out of the partnership agreement, but you might get it out of friendship."

All the partnership agreements are part of this record, if the Court please. You examined them and the Master examined them. The Master came forth with this finding as a result of having those partnership agreements before him.

Your Honor was correct in your feeling that we might be debarred by the agreement itself from getting the papers. We are debarred from doing it.

THE COURT: Mr. Schwartz says he has a lot of new testimony. I do not recall any testimony when I first had this matter, that the plaintiff was writing a letter to Sturzenegger and turning it over to somebody in the
1312 office and having the answer written right there. I do not remember that, or that Sturzenegger had the office with him a few years ago and then moved around the corner, and things of that sort.

Of course, I have not looked at the evidence, but he says the position of the Court in that regard, rather than having been weakened, has been materially strengthened on the point of control.

MR. WILSON: Those facts show this, if the Court please, in 1937 that they separated into two buildings, not just recently.

Just imagine that, now. That is going on fifteen years ago that they split up into two different places.

Then he says that I pointed out that after 1940, or after 1939, that Mr. Sturzenegger was a director of Chemie. And I said it was only natural that being in the position of a party with authority to sign, that the mail would be routed to Sturzenegger. And Mr. Schwartz replied just now by saying, "But I am talking about four years prior to that."

Now, your order for inspection has its impact in the year 1950, not the year 1936, and not the year 1940.

In 1950 Mr. Sturzenegger was a managing officer according to Your Honor's own decision of this court. That
1313 is the reason, as I told you yesterday, that you required us to produce him over here for a deposition.

Now, Your Honor, that is the valid reason that I give time-wise the mail would be routed. There is just as good a reason why the mail was routed in 1936, because Mr. Greutert was a managing director at that time, that is, a director with power to sign. I should correct myself. And Mr. Sturzenegger was his assistant. It is only natural that the burden should be shared there. It was not illogical at all that papers which would logically be routed to Mr. Greutert should come across Mr. Sturzenegger's desk.

But, Your Honor has been led into the reverse of this situation, as I pointed out to you yesterday. This is not a contest over the production of the Chemie papers. There is no evidence that the Sturzenegger papers were routed over the desks of people in Chemie. You are after the Sturzenegger papers. There is evidence of about five instances when files of Sturzenegger were known to be in the Interhandel or Chemie or the Chemie building. That is all the evidence there is on the subject. Even in the Sturzenegger deposition that is all the evidence there is on the subject.

The result is that there isn't any evidence of any consequence that the Sturzenegger papers which you are
1314 today seeking to obtain were in the possession of or control of the plaintiff. So do not be misled by this reverse set of facts. It is not that set of facts that is important. It is the fact: How frequently have the Sturzenegger papers come into the control of Interhandel, that we are concerned with.

THE COURT: Let me ask you one more question about your views. Oftentimes in order to clear up my mind I have to get an extreme illustration.

Suppose I should find, or should be able to find from this record, that your had been able to get some pretty strong documents from Sturzenggger's files to prove your case here; and that I should find that Sturzenegger's records would be the likely place to give the absolute controlling data in this case, certainly very powerful data.

Now, you having gotten it and the Government of Switz-

erland having closed its doors completely, and you are in good faith about it—let us say perfectly good faith—what would this Court do? Would we let you go ahead and get your judgment on that, notwithstanding that Switzerland has withheld papers that we think are very powerful?

MR. WILSON: Now, you say extreme cases——

THE COURT: Yes, that's right. I am not making any finding of fact here now, because I do not know. I
1315 would probably have to look through the whole file. But that does point up some part of Mr. Schwartz' argument.

MR. WILSON: Well, I think it is subject to some qualification. I mean even on that hypothesis.

THE COURT: Well, give me, if you will, your answer to that, because——

MR. WILSON: Well, let me approach it in my own way, Your Honor——

THE COURT: Yes.

MR. WILSON: Because I want to attack both of your premises. Your premises were indispensability and the fact that we had access to the papers for the prosecution of our claim.

THE COURT: Well, I will not say indispensability, then, I will strike that out.

MR. WILSON: All right.

THE COURT: Let us say you had material papers from—and important, as I take it you have—he has held them up in his hands here and says you have important papers from the Sturzenegger files.

MR. WILSON: Oh, Your Honor misunderstands. I am sure Mr. Schwartz does not mean to say that he has evidence that I have material papers from the Sturzenegger files that he does not have.

1316 THE COURT: No.

MR. WILSON: There is no evidence of that in this case at all.

THE COURT: No, no. But he says you were able to obtain without without any sanction from the Swiss Government,

and the Swiss Government made it possible for you to obtain some of the Sturzenegger papers, which he says are helpful to you. That is what I understand.

MR. WILSON: Yes. Now,——

THE COURT: Now, wait a minute.

He says you have got that. Then there comes a time when this Court asks, or requires you, whether you have authority to give it or not; to bring in others, and the Swiss Government stops right there and says no. The effect of it from our point of view is, the Swiss Government lets you have some of them that you can offer in evidence but conceivably there are any number of others there that might be helpful to the other side. Now, the Swiss Government stops us. I am not saying that you refuse or do anything wrong. I am assuming now I agree with everything the Master says on that. But the Swiss Government withholds that, and therefore at the trial of this case you are going to have something they let you have but because of their secrecy laws the other side is estopped from

1317 getting certain things that conceivably would be very helpful. I will not say indispensable. I say helpful.

* * * *

Filed Feb. 18, 1954. Harry M. Hull, Clerk.

1392 **Exhibit A, Transcript of Proceedings Before Special Master, January 8, 1953.**

WHITEFORD, HART, CARMODY & WILSON
815 FIFTEENTH STREET, NORTHWEST
WASHINGTON 5, D. C.

November 12, 1952

William J. Hughes, Jr., Esq.
821 - 15th Street, N. W.,
Washington, D. C.

In re: *Chemie v. McGranery*

Dear Colonel Hughes:

In connection with defendants' second discovery motion, I am sending Mr. Schwartz today a supplement to the answers to Exhibit 1. I believe this completes an explanation

on the record of each and every item in defendants' Exhibits 1, 2 and 3.

We are filing the three answers and two supplements in the Clerk's office, and enclose herewith for your own file a complete set.

Last week, Messrs. Schwartz and Jacoby inspected all the documents now in this country. It is our plan to make available for inspection before December 3, 1952 all the other documents so indicated by our answers.

We still desire you to observe the papers which are in our possession.

Plaintiff was allowed two weeks to react to the demand of defendants with respect to two groups of papers mentioned in plaintiff's answers, namely,

(a) Correspondence of Walter Germann, when he was a first
1393 clerk of Greutert/Sturzenegger & Co., with clients of that firm.

(b) Papers which do not belong to Chemie, Osmon or Greutert/Sturzenegger & Co.

We think the first group is plainly impounded by the Luthi order. This order does not cover merely papers on the Sturzenegger bank premises; it covers all Sturzenegger papers.

Plaintiff submits that under the rules it should not be required to produce the second group of papers. Their relevancy has not been established by the defendants; they are papers of third parties; and good cause has not been shown for their production. Plaintiff can show that the mere fact that a document bears an SCO number does not establish its relevancy.

Plaintiff requests a hearing regarding these two matters.

Very respectfully yours,

/s/ JOHN J. WILSON
JOHN J. WILSON

cc: David Schwartz, Esq.
JJW:gb

1399

Filed Mar. 3, 1954. Harry M. Hull, Clerk.

1399 Transcript of Proceedings Before Special Master, March 17, 1953.

1402 Mr. Wilson: I want to present to your Honor as a preliminary matter a motion to stay the proceedings, the exact language of the motion being that we move you to stay further proceedings before you insofar as the plaintiff is concerned until it is determined whether or not the plaintiff's action is to be dismissed pursuant to Chief Judge Laws' opinion of February 19, 1953.

The Master: Does that mean, Mr. Wilson, that you want to stay the proceedings until he has signed an order based on that opinion——

Mr. Wilson: No, sir.

The Master: ——or until any actual dismissal?

Mr. Wilson: Until any actual dismissal.

I'd like to review this set of facts in connection with and in support of this motion. Your Honor has scheduled this morning for hearing or further hearing that part of the Government's second discovery motion which relates to some 1,600 documents and also has scheduled for hearing a motion of the defendants with respect to so-called original books of the plaintiff. There are also pending before your Honor and undisposed of a motion by the plaintiff for additional discovery and for description of withheld documents and also an ancient series of objections to 45 interrogatories which the plaintiff propounded of the defendants over a year or so ago.

1403 Now, it is our position that these pending matters all relate to discovery, and the purpose of discovery has to do with preparation for a trial of a case.

As the record now stands, under Judge Laws' opinion, there is no doubt about the fact that he intends to dismiss us out of the case unless we produce the Sturzenegger records within a certain period of time. Now, it is true that the production of those records would, I believe, result in a withdrawal of the Court's opinion upon the motion to

dismiss. Nevertheless, we are faced now with the shadow of a definite dismissal unless we do certain things.

Now, in the face of that situation I submit that it doesn't make sense to proceed with discovery matters, because discovery matters are designed to aid in the preparation for trial. . . .

* * *

Filed June 17, 1953. Harry M. Hull, Clerk.

1424 Transcript of Hearing Before Chief Judge Laws, June 15, 1953.

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1439 Mr. Schwartz: . . . Your Honor, I suppose, has no choice and we have no choice. An extension is required.

Mr. Wilson waited until twelve days before the deadline to send out these waiver letters. Now, your Honor knows what we think of this whole waiver procedure. It is selective discovery. We are to have the discovery that all the parties agreed that we may have.

We think it is a delusion, a phony and a fraud, but even in that fraudulent discovery they wait until May 30th, fourteen days before the deadline. And when is the motion made a matter addressed to your Honor's discretion in a four month period? The motion is made one week before the deadline. It is called to your Honor's attention four days before the deadline and today, your Honor is confronted with the facts.

It is not surprising to us, your Honor. These people

1440 who have been waiting and spending three, four years delaying and using every dilatory tactic for extensions and postponement actions—of course they are willing enough to spend four months. They are willing to spend forty months if your Honor will indulge them.

What a mockery this thing is. They have now done with perfect ease and nonchalance the things they swore were

impossible to do after your Honor made your first order and after the papers were confiscated.

They brought a learned witness from Switzerland to testify that the kind of appeal they took here was impossible, unheard of, but now, late and good and late, they take that appeal as simply as we can walk into a District Court and file a complaint.

It's a mockery, your Honor. It's a bitter mockery on this Court, but your Honor is confronted with the facts.

We have no opinion as to how long this extension should be for your Honor. It is for your Honor to decide. That's all we have to say.

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Filed Oct. 21, 1953. Harry M. Hull, Clerk.

1446 Transcript of Hearing Before Chief Judge Laws, October 20, 1953.

1447 Mr. Wilson: May it please the Court, eight months ago yesterday, your Honor handed down the momentous decision in this case.

On the 31st of March, your Honor entered an order based upon your opinion, and allowed the plaintiff until June 15, in which to endeavor to comply with your Honor's order of July 5, 1949, for the production of the Sturzenegger papers.

We began promptly, as your Honor will recall from the recitals which have heretofore been made to you, to pursue the administrative remedies in Switzerland, there being no recourse to the courts of Switzerland to review federal administrative action there. We were consistently turned down again.

As the time approached for June 15, and because the Federal Counsellor in charge of Justice and Police Department of Switzerland had indicated that he approved of the suggestion of the Swiss Federal Attorney that papers might be screened and released as the result of the production of waivers and consents by the owners of the banking secrets relating to the papers, we began to solicit waivers and con-

sents from a list of individuals, 124 or 5 in number, which list had been earlier prescribed by the Department of Justice as what they understood to be an easy source of waivers, and thus an easy source of papers.

1448 When June 15 came and we had not then yet had action from the highest administrative body in Switzerland, the Federal Council, which is the presidium of Switzerland, and we had begun the solicitation of these waivers, we came in before your Honor empty handed, except to report the results which had occurred to that point. We asked your Honor for more time; and your Honor graciously allowed us until the 15th of July.

Before that date arrived, we had received the opinion and decision of the Federal Council affirming the decisions of lower executive departments in refusing to permit wholesale release of these papers. We had begun to receive responses from our solicitation for waivers. And by that time, an elaborate system had been inaugurated in Switzerland by the officer of the Swiss Federal Attorney, and other Swiss Government officials, for the screening of the Sturzenegger papers against the available consents; and that process not only required the individual handling of each document, but as well, the Swiss Federal Attorney required that each document released should be stamped consecutively with a number, beginning with number one; and that each document being released should be photostated, and the photostat retained permanently in the files of the Sturzenegger Bank.

Now, the obligation which your Honor imposed upon us to make discovery in this case was to make discovery in

1449 Switzerland. Realizing the unfortunate delays which had taken place, and the obstacles, we were happy to work out an arrangement which had as its objective the production of the original Sturzenegger papers in the United States. So that when we, on or about the 10th or 11th day of July, filed a motion for an extension of time until the 15th of September, there had been partially proc-

essed some 3000 papers, preparatory to their being released and made available. We asked your Honor to extend the time then until the 15th of September. We represented to you that we estimated that there would be thousands of documents made available by that date, although we did not anticipate that they all would be available by that date.

We encountered vacations in Switzerland, just as one encounters vacations in the United States, vacations on the part of Government officials as well. And so we encountered a temporary slowing-down of the process at that point.

When your Honor announced, through your assistant, that you would hear this matter on the 19th of October, instead of making a submission of a few thousand papers in the interim, we continued this arduous and tedious task, so that we might be able to make the best possible showing by today.

On last Wednesday afternoon, I received from Switzerland 63,658 original Sturzenegger documents; and we began the task of arranging them for immediate inspection. We notified

1450 Mr. Schwartz about three o'clock on the afternoon of last Thursday, inviting him to begin the inspection of the Sturzenegger documents at our offices yesterday morning at nine o'clock.

When that letter was sent to Mr. Schwartz, I was engaged then in completing a motion which your Honor has before you, reporting to your Honor the receipt of these documents, and asking your Honor to vacate Paragraph 4 of your Order of March 31, 1953, and to allow us more time for compliance with your Honor's Order of July 5, 1949.

Now, Paragraph 4 of your Honor's Order of March 31, which, as your Honor knows, was taken upon your decision of February 19, 1953, said that we had been in default for two years and we had produced no documents at all, and some indication was made that there was a likelihood of getting documents, and that is when you allowed us first until June 15 for their production.

In the preparation of this motion, in which I sought these objectives, I recited that we had received the 63,000 documents, that we were expecting more documents from Switzerland, and that we considered that this materially changed the circumstances which confronted your Honor when your Honor first handed down your opinion in February, and passed your order in March.

We said that we regarded this program of ours as leading

1451 to a substantial compliance with the Order of July 5, 1949. We do not ask for relief this morning from the Order of July 5, 1949. We have not completed our work. We shall produce more papers, more documents. Therefore, we say to your Honor today, please take away from us the stigma which has been affixed by your Honor's Paragraph 4 of your Honor's Order of March 31, in which your Honor found, correctly then, that no papers had been produced; and please give us an additional time further for us to continue our efforts to produce the Sturzenegger records.

This motion was, and is, accompanied by my affidavit, in which I have reported the receipt of these papers from Switzerland the previous afternoon, the necessity for arranging them for inspection, that several days would be required for that purpose, and that we would be ready, in view of the week end, Monday morning, and that I had sent Mr. Schwartz the letter which was in the tenor I have mentioned a few moments ago.

While I am not at all sure that a different letter would have been written on the part of Mr. Schwartz, between the time that he received my letter and the time he received my motion, he wrote me a letter. I say, it must have been between those times because in his letter he refers to my motion of July 14 and doesn't hint as to the existence of a motion of October 16. Although, as I

1452 say, I don't make any point that he would have made a different response.

He said to me that he assumed that we were going to make partial and selective discovery, and unless we told him that the Swiss Government had released all the papers, he would not be at our office on Monday morning, October 19.

Well, the Swiss Government has not released all the papers, and so I did not communicate with Mr. Schwartz, except to send him other papers, other moving papers; and so Monday came and went, and the gentlemen from the Department of Justice have declined to avail themselves of the opportunity to begin the inspection, spot check, make a quick or a long survey, howsoever they want to deal with the problem, of 63,000 Sturzenegger papers.

Now, if the Court please, doubtless it will be said here today that we have bundled together ticker tape and tissue paper to bulk out these papers. To give you some concept of their size, their quantity, they are contained and fill ten ordinary file cabinet drawers in my office; and they were ready beginning sometime Sunday, for the arrival—which, unfortunately, I did not expect after Mr. Schwartz's letter—on Monday morning of these gentlemen to make any kind of a search they wanted to.

Now, I submit—and I don't want to be anticipating too much—that these gentlemen will talk about ticker tape

1453 and tissue paper. I couldn't bring to the court house 63,000 papers; but I brought to the court house the famous I. G. Consortium papers, 500 and some in size.

Now, with Mr. Schwartz's large staff, I turn them over to him in the court room here—I want them back—to spot check them while I am talking. I. G. Consortium is regarded as one of the most important phases of the Sturzenegger Bank papers. Let him take them and look at them; and when he gets up to talk, let him call them ticker tape and tissue paper. Let him dare to call them padding. Let him dare to call them portions of the telephone directories, or something of that sort.

Now, if the Court please, we have filed in this cause, before your Honor in support of our motion, in addition to my affidavit, the affidavit of Edmund Wehrli, the Swiss Counsel for Interhandel, the man who has carried the burden of supervising from a lawyer's point of view this tremendous task, the task of sorting and screening and arranging and numbering and photostating 63,000 documents, more documents than many a law office carries currently for all of their business.

Now, in Mr. Wehrli's affidavit he informs your Honor that out of the 124-or-5 waivers which were solicited there have been 91 clear consents. It so happens that out of the 91 clear consents, some 17 of them had no papers referring to themselves in the Bank; two have made refusals; that

1454 two others say there is no occasion to give waivers because they hadn't any papers in the Bank; and that four have not been traced because of death and no estates, or liquidation of corporations, and nobody is now available.

In addition to working over these two refusals, Mr. Wehrli says that he is continuing correspondence with the remaining 20, for the purpose of clearing up their objections to consents, technical questions which they raise, and in every way, shape and form, to try to get clearance from them. He tells your Honor that the 63,658 papers which have been produced were the result of the waivers. He encountered there two problems: We speak of a primary waiver as being the man who is the customer of the Bank. Now, if in a transaction between the Bank and a customer, another man's name is mentioned, he is secondarily involved, and his waiver is required. That is what I mean if I use the phrase "secondary waiver." And so Mr. Wehrli has had to pursue not only the primary waivers but a great number of secondary waivers; and so far, certain papers on the primary list have not been produced because of the outstanding secondary interests, and waivers are being solicited there.

Mr. Schwartz has indicated in his letter that he shall talk about selective discovery and partial discovery. True, there is partial discovery. There is no selective discovery in any sinister sense. Any selective discovery which exists

1455 up to this moment, and which will be, I am sure, obviated, comes about by virtue of the fact that when a paper relating to a man who is on the primary list involves a secondary interest, that letter must be laid aside until a waiver is gotten from that person. With the exception of that kind of selection, of sorting, there isn't any selection that Mr. Schwartz can talk about in this situation.

Now, in addition to that situation, we also find that this process is still going on, and that there are papers covered by waivers which are being screened and have not yet been released; and Mr. Wehrli says in his affidavit that more papers will be forthcoming to your Honor.

Now, we have a third affidavit in the case, an affidavit by my young Swiss assistant, Mr. Konz, who has supplied your Honor, from a check of the 63,000 papers, with the names of the individuals and corporations, and other entities, whose waivers have resulted in the release of these papers. That is a very interesting list if the Court please, a list of some 75 names, a list of the highlight names of the leading actors in this play. I shall speak about them in more detail in a couple of moments.

Also in Mr. Konz's affidavit, he reports to your Honor that so far no books of account have been produced. Your Honor's order called for 140 books of account from Sturzenegger and Chemie; and the source material on the point,

1456 which your Honor derived from the Swiss compensation office, showed that 110 books were Sturzenegger and 30 books were Chemie; and the Government has the 30 Chemie books. They are wrangling with me about the books, just as they wrangle with me about everything else; but, nevertheless, I am talking today about 110 Sturzenegger books.

Now, the book problem we are going to lick. We are going to produce books as sure as I am standing here. But I want to talk out with your Honor—because your Honor ought to know—what our book problem is. In the first place, we are waiting until we get all the waivers we can get before we tackle the books; because, as Mr. Konz has stated to you, slightly philosophically, in his affidavit—yet as accurately as one can be—your Honor realizes that a banking book contains the aggregate of the secrets of all whose transactions are contained therein, and that the pages of a bank book are not separable in the same sense as a paper, a letter.

Now, when we get the totality of the waivers that we are going to be able to get, we may find that we have enough waivers for the whole of one book, or the whole of a series of books. If we do, I have not the slightest doubt that in accordance with the screening process which has already been pursued, those books will be made available. If we do not get a number of waivers, which are co-terminus
1457 with the contents of a given book, we have under consideration to propose to the Swiss Government that we be permitted to photostat those pages and make them available, just the same as we can make available the documentation in the files relating to the same individual who waived the banking secret.

Now, naturally, whether we photostate all the pages of a book or some of the pages of the book, the gentlemen from the Department of Justice will ask, and should be entitled, to verify the accuracy of the photostats. That runs us into a second problem which arises in Switzerland, but which I think we are going to be able to lick, and this is it:

Your Honor will remember that there is a statute in Switzerland known as Article 271, which makes it a crime for a foreign government official to perform any official service on Swiss soil without the consent of the Federal Council. Now, so far, because of the tremendous impact which your Honor's order had upon the totality of the Sturzenegger records, a private bank in Switzerland, the

Swiss Government withheld its consent under 271, for the Department of Justice to make in Switzerland any inspection of Sturzenegger papers or books. We think that, as a part of this process, because of what has now been the acquiescence of Swiss officials in this method of dealing with the problem, that we shall be able to get consent for the gentlemen

1458 from the Department to check whatever photostats of the books we give them against the original books in Switzerland. I fear that we should have difficulty in trying to bring the original books to the United States; and that is because, if the Court please, the rule in Switzerland is not unlike the rule in most foreign countries, that business books cannot be taken out of the country.

Your Honor dealt with the Artemisa decision from the Ninth Circuit or Tenth Circuit in our opinion, and which case I pressed upon your Honor in argument prior to February 19. Your Honor found in that case that Mexico had a similar statute; and you found that the courts of the United States entered into a system of give and take, by permitting the production of photostats with such verification as might be proper. So that I am not standing here today fooling you about this book situation. I am confident we are going to lick it in one of the several forms that I have been talking to you about.

Time-wise, it just hasn't made sense to attack those problems until we knew whether we were going to get sufficient waivers to clear whole books. But that is on the agenda; and that is on the agenda right now, along with the production of additional documents.

Now, if the Court please, I came in to your Honor in June. I saw your Honor again in July empty-handed. We

1459 cast ourselves, as it were, upon the mercy of the Court, with an exhibition of what I know to be good faith, and which I hope we demonstrated to your Honor to be good faith, frantically and anxiously to meet your Honor's requirement.

I am here today, I hope, in the same humble spirit, but not with the feeling that I must appeal to your Honor as an act of mercy to give us more time. I am here today with some degree of pride. I am here today to ask your Honor, in the interest of mere and sheer fair play, on the showing which we have made, to give us a further opportunity to see what we can do in this situation.

Now, if your Honor please, when it comes to the question of why the great Department of Justice of the United States of America should play an all-or-nothing game with your Honor and with me, if I had produced five hundred papers, or, let's say, even five thousand papers, I think that I could appreciate these gentlemen, so anxious as they represent to the Court to get their fingers upon the Sturzenegger documents, to turn their backs on any such trivial offer. But I say to the Court that the location of good faith has changed. It is not now a question of whether Interhandel is in good faith. It is a question of whether the Department of Justice is in good faith. Do they want to search for enemy taint? Do they want to look at
1460 63,000 documents? Suppose that my invitation for them to come to my office yesterday morning did conflict, time-wise, with our engagement with your Honor. When your Honor announced that you would put this case over a day, on account of your other engagements, would you not have thought that these gentlemen would have spot-checked what I had, to see whether they could accuse me of ticker-tape and tissue paper? Do you think it makes sense that such a quantity of original documents—not photostats—coming out of this bank, which has been so badly criticized by the Government of the United States, should be ignored and scoffed at?

In the argument of Mr. Schwartz before your Honor prior to February 13, and in his whole theme, he said—and I quote specifically from page 9 of his brief:

"The Sturzenegger papers will cast full light on the issues of enemy taint which are crucial in this case."

Can he turn his back on my office and tell your Honor to a moral certainty that these 63,000 papers will not aid him, will not be the source of evidence of enemy taint, when I come in a couple minutes to discuss with you some of the names which are involved in the papers which are available for inspection.

This isn't a question before your Honor today of total or partial production. This is a question of the opportunity which is afforded to the Department of Justice to examine

1461 an incredibly vast quantity of original documentation that it may not lose the opportunity to test their search for enemy taint against them.

It is possible, let us say, that Mr. Schwartz might determine not to look further after he has looked into these 63,000 papers. Your Honor may have to re-examine the whole question of whether, with all of these papers available, the demand of the Department of Justice is not substantially complied with. But I repeat to your Honor, I don't make any prayer to the Court today. I am not asking for relief. I ask for technical relief from the Paragraph of your Honor's Order. Maybe I am hypersensitive about that, your Honor. Maybe that is a matter of words that has relative unimportance; because after all the important thing which I am doing today is asking your Honor to give us more time to continue to produce these records.

Now, in your Honor's opinion, on pages 12 and 13,—and the language of it is such that the source of the paragraph in question is directly ascertainable by an examination of Mr. Schwartz's brief—your Honor said the following: First, as a preamble on the same page 12, you said:

> "The next question to be decided is the nature and significance of the Sturzenegger papers as bearing upon

1462 the development and resolution of issues in this case."

Then skipping over a paragraph which I regard as not relevant for my present presentation, your Honor said:

> "As a recital of what would be revealed by the Sturzenegger papers, the Government represents that only the Sturzenegger papers will reveal: (a) the facts concerning the Circle controlling Chemie, representing 39 percent of the ownership; (b) the facts concerning the stockholders of Chemie, since all of the plaintiff's stock was bearer until 1945; (c) the facts concerning the ownership and activity of the Sturzenegger firm, plaintiff's dominant stockholder, a private bank once German-owned; (d) the necessary information concerning the ownership of all the plaintiff's assets, virtually all of which came from Sturzenegger; (e) information concerning the nature of companies controlled by plaintiff and, in particular, concerning the investment and management of plaintiff's assets."

Then comes a new and concluding sentence in that paragraph:

> "The Government contends that by a device known as a consortium or secretariat, a kind of joint venture or enterprise between Chemie and Sturzenegger in the form of an account on Sturzenegger's books, Sturzenegger has throughout the years, invested, loaned, or otherwise managed and controlled plaintiff's assets, with the result that no details
> 1463 whatever appear in plaintiff's books, balance sheets, or records."

Let me take the last sentence first. Let me say to your Honor that we are producing the bulk of the consortiums and I have no doubt that within a very brief period, we shall produce the bulk of the secretariats. Secondly, let me say to you—and I do not wish to re-argue directly matters which were before your Honor last February—that the statement which your Honor has adopted in your opinion, that "Sturzenegger has throughout the years invested, loaned, or otherwise managed and controlled plaintiff's assets, with the result that no details whatever appear in plaintiff's books, balance sheets, or records," I find that

your Honor picked that phrase up bodily from page 13 of Mr. Schwartz's brief.

I want to say to your Honor deliberately, consciously, and without qualification, that is an untrue statement; and I can't understand how the gentlemen from the Department of Justice, with the knowledge that they have of this case, could represent to your Honor that no details whatever appear in plaintiff's books, balance sheets, or records, concerning plaintiff's assets.

They have plaintiff's books; and I know somewhere here our own analysis of the plaintiff's security ledger, which will show year after year the details of Chemie's portfolio.

1464 I can cite the page and verse in the books where that information appears. I remind these gentlemen that we supplied them on the Chemie inspection with the elaborate auditing reports of the Swiss auditing firm known as Neutra, which made complete analyses of the investment and security portfolio of I. G. Chemie from source material in the books and records of I. G. Chemie; and your Honor has been victimized by the representation that the books and records of I. G. Chemie would not supply any evidence concerning their assets.

Now, I say to your Honor, in addition—and I take up the five categories that your Honor put in this paragraph which I quoted—I find again, and this is, of course, not criticism of the Court, that the source of these five categories are Mr. Schwartz's representations to your Honor.

The first category is the facts concerning the Circle controlling Chemie, representing 39 percent of the ownership. Your Honor will recall those peculiar names of the Basle Circle Companies. Your Honor even mentioned them at least once in your opinion. Rigidor, Perpetua, Industriebank, and Sopadep. All four of those companies have made waivers. All four of them have given consent to the production of papers; and Mr. Konz's affidavit informs your Honor that the papers are in our office regarding these

Basle Circle Companies. There are others, Providentia, Fiduziar Gesellschaft. They are all on the list.

1465 I find that when Mr. Schwartz attempts to support his demand for papers, he quotes the Swiss Compensation Office; and so he quoted the Swiss Compensation Office to you in this connection. And the quotation from the Swiss Compensation Office shows that:

> "From the above, it may be seen that the majority of I. G. Chemie shares was, until 1940, in possession of friendly firms, consortiums, and so forth, of the I. G. Chemie Circle or the I. G. Farben Circle, and could always be controlled by Greutert and Company."

The Circle firms have consented. The papers relating to the Circle firms are in my office available for inspection.

In sub-paragraph 2, your Honor says that Mr. Schwartz claims that the facts concerning the stockholders of Chemie can only be found in Sturzenegger books, since all the plaintiff's stock was bearer until 1945.

I say to the Court that the mere fact that the stock was bearer stock does not provide the predicate for the conclusion that, therefore, all the information must be in the possession of the Sturzenegger Bank.

Mr. Schwartz has and has had from the I. G. Chemie books the records of dividend payments on bearer stock, and has had the score sheet on the stockholders who attended the annual meetings of I. G. Chemie from 1929 to date.

Now, if the Court please, lest your Honor is not

1466 familiar with the European custom of bearer shares, they have appended to them coupons, just the same as our bonds do. And it was necessary, over the years, as coupons became due by the declaration of dividends and the public announcement of such event, that these coupons were deposited with various banks. It is true that undoubtedly some of these coupons must have been deposited with the Sturzenegger Bank; and that information will be

available to Mr. Schwartz from the books of Sturzenegger when they are made available, and, I hope, shortly.

The depositing location of the coupons of over 50 percent, I believe, of the shares of I. G. Chemie can be traced by name and address to banks throughout Europe. That information is available to Mr. Schwartz from the dividend books of I. G. Chemie.

In 1938, the last dividend coupon on the shares was used up; and Chemie followed the well known talon process of permitting its stockholders by adequate identification, to receive new coupon books; and there was a second check on the source of the possession of Chemie shares. There, again, that information, as far as outsiders is concerned, has been made available to Mr. Schwartz from the books of I. G. Chemie? He has the source material from which we were able to compile, in our own work papers, elaborate score sheets by each general meeting, according to each

1467 general, or stockholders' meeting of I. G. Chemie, exactly who appeared and voted shares at those meetings.

We come next to (c) in your Honor's opinion.

THE COURT: Let me ask you something. I don't find myself so much concerned with those details as I do with the general principle.

When the Government of Switzerland went to look into the ownership of this company, it had free access to the Sturzenegger records, as I understood it; and I am wondering if we are really objective when we might establish a rule sooner or later that where a plaintiff is told to produce papers that another Government thought were material, and had a perfect right to look at it, that he should take literally months and years of examination by this other Government, and by himself, and by arrangement and sorting, to produce them. I mean, that isn't my idea of discovery. My idea of discovery is when you call upon people to produce records, they produce them; and

the other side looks at them promptly. You don't let somebody screen them.

You might have a paper in there that is directly contrary to another paper that is produced. Somebody claims a privilege, and that stays out. Now, that is not my idea of disclosure. That is what I really would like to get at. Is there such a thing as having a group of papers—let's take a simple proposition. Let's say Mr. Schwartz
1468 is wrong and I was wrong, and the Government of Switzerland looked at them and it was looking into the matter. Now, when we want to look into it, they hand us 63,000 out of 100,000, or maybe 63,000 out of 63,200. The 200 might be the vital papers.

That is what I want to know. The details are not giving me so much concern.

Mr. Wilson: Let me deal with that in this way: In the first place, we are telling your Honor that a great many more papers will be produced.

The Court: Well, that is right. I understood that. The only question in my mind is, though, having had it established pretty well by now that some are not going to be, should I give you another three or four months to produce others?

Mr. Wilson: I don't think it can be said to a moral certainty here that there is any proof that all these papers will not be produced.

Don't misunderstand that. That is not a representation——

The Court: I thought you said some of them had already refused?

Mr. Wilson: They have. Two have refused; and we are dealing with them. Let me make my representation.

The Court: I would also like to know, before you get through, what you think would be a reasonable time for
1469 cut-off.

Mr. Wilson: Yes, sir. Let me get my representation clear to your Honor.

THE COURT: And I want to get across to you this one thing: I tried an Alien Property case one time where there was an instrument which indicated a conveyance, and there was a pretty strong claim that there had been another paper which had not come to light, which had negatived the validity of that conveyance. It was fair on its face and complete; but there were other reservations on the side, which would be likely, I suppose, if somebody did wrongfully attempt to hide true ownership.

Now, suppose that happened to be a banking paper, and the beneficiary said, "No; I won't permit that to come out." Don't you see, especially if the other Government had a look at it, what the situation would be? I don't know how we can permit 63,000 papers to come in and 150 to stay out.

MR. WILSON: May I make what is somewhat of a facetious remark, but respectfully said about your observation in referring to another case? In your judicial experience, you have also tried men who were found guilty and tried men who were found innocent; and you can't use your experience in one situation to apply to another.

THE COURT: Yes, but that is a good illustration of a kind of fact. Let's suppose I hadn't had another case.

1470 Suppose I make a deed today and then make a secret conveyance back to myself. Let's put it that way. And then I present the deed and let someone secret the other. That is the thing I understand we get in discovery. When you discover papers, you don't scrutinize them one by one and list them up, and let somebody say what the other side sees and doesn't see. That has never been my understanding of what you do.

MR. WILSON: If your Honor please, I daresay—and I don't mean to belittle your experience which is far larger than mine, that you have never had a case in which papers of this volume were involved.

THE COURT: I am very sympathetic with your problem and what I have already found to be your good faith; but I have already ruled that that doesn't save you.

MR. WILSON: But, if the Court please, let me get my representations to you correctly that I started to make a few moments ago.

THE COURT: All I want to know, and all I am interested in is: Is this defendant going to get the same papers that the Government of Switzerland looked at? That is what I want to know.

MR. WILSON: I do not mean to say to the Court that I will guarantee that all papers would be produced, because we are having our difficulties. I am not going to say to the Court today that I have given up all hope of that.

1471 There is no evidence to support my giving up all hope. Now, I am talking to your Honor not about quantities as quantities, but I am talking to you about quantities and qualities of these papers.

Would your Honor, in the face of this monumental effort which we are making at discovery of more papers than I think have ever been required to be produced by any single litigant in any lawsuit, sit here today and, as a matter of law, rule that the Department of Justice, with all the facilities at its disposal, is excused from looking at these papers because they are not all?

THE COURT: The only way I might rule it would be in the event I was convinced that this was only a part of the papers. That would be the only way I would. Why should they look at 60,000 when they know, and I know positively, that some of those you were ordered to produce just haven't come in? I mean, why should they waste the time?

If you call on the Capital Transit Company to produce records, and they give you 75 percent of them and keep back 25 percent, I wouldn't say the other side had to read them.

MR. WILSON: You would be dealing there with maybe 50 or 100 papers, or maybe two or three.

THE COURT: I think probably the burden of proof would be on you to show you complied with the order, not on the Government to say you haven't. That would be my guess.

1472 Mr. Wilson: As I said to your Honor twice this morning, I am not asking for discharge from the order. I don't think I have the burden of proof, may I say, to establish complete compliance, because I haven't been able to do it; and I want more time in which to do it.

The Court: I understand that.

Mr. Wilson: Here is a situation that I don't think one can shut his eyes to: Here is the great complaint about the Sturzenegger Bank being a branch of I. G. Farben, some extended hand of the Germans; and we have 7000 Farben papers, 7000 Deutsche Landenbank papers, 9000 Metall Gesellschaft papers, all German concerns; and would your Honor say that the Department of Justice should, as an interim measure—not as a final measure, as an interim measure—be relieved of the necessity of looking at those papers because it is only partial discovery?

The Court: I might. I might. Suppose I had had identified among those papers some reference to two or three papers out of the 9000, two or three of each, which were quite material? Why look at the 9000 if you are going to keep part of it back? That is my only reasoning.

Mr. Wilson: I don't know that there is any such paper in here.

The Court: I don't either.

Mr. Wilson: But I am sure of one thing, that your
1473 Honor cannot rule, as a matter of fact or law today, that such a situation exists.

The Court: Here is the point, Mr. Wilson: This discovery means showing them all you have.

Mr. Wilson: I understand that.

The Court: You don't pick out something which you say, or which someone consents to, and say, "You look at this." You might keep back the most material thing in the whole outfit. I don't mean your client. I mean the Bank. That would be the result. It might be the most important paper in the outfit. If we put discovery that way, it isn't discovery. It is taking a peek at part of what the man has. It is taking a peek at his exterior, not everything he has.

Mr. Wilson: Your Honor, I say to your Honor somewhat by way of repetition, you can't judge this situation today by any item of experience which you have had in the past.

The Court: It is a rather simple matter though. We don't want to start up, just because a corporation is big, by letting them put in 98 percent of the papers by way of discovery. The principle of defense is the same with the little man as it is with the big man.

Mr. Wilson: Nobody is talking about little corporations or big corporations at all. I am talking about little quantities and big quantities. I am talking about the run-of-the mine case that comes before the Court,

1474 two or three statements of witnesses, or a half dozen pieces of paper, in which we have none of these technical questions to deal with. We have to do this thing by degrees; and the fact that I am able to stand before your Honor today and boast about having accomplished this much at this time, with a prayer that we have more time, is something that your Honor has never had to deal with in principle or in fact.

The Court: I am not arguing against the proposition. I don't know if I do. That if you are showing me that it is reasonably certain that within some conceivable cut-off time, you will comply with the order, and the Government isn't prejudiced, maybe I ought to give you more time. But if it has already appeared that you are not getting anywhere, and we are just working you to death, and spending money of your clients, and it is an utterly vain proceeding, then we might as well get you on the way up to get the law points decided.

Mr. Wilson: Is it to be said by your Honor that a party who comes in with 63,000 documents and an expectation of getting a great many more, and of getting books, is not getting anywhere?

The Court: No. You see, when I say that, I say, if you can show me there haven't been some, that might very well be material, finally closed off, if they haven't been finally

1475 closed off, that may be all right. But I understood you to say—and I don't see any escape from it—that some of these people, notwithstanding your heroic efforts, have said absolutely no. Now, I don't know whether those papers are the absolutely governing story or not. I just don't know. There is no way on earth to know. In discovery, that is what you find out. Now, if I start a precedent here in any case of permitting that kind of withholding to happen, when a full discovery is asked, it seems to me I am making bad law.

Now, of course, if you still have a chance to get them, that may be another proposition. My point is very simple: If you get 101,000 and leave out 25, those 25 may be the very ones that control. Now, if you have any explanation of that, I would like to hear it.

Mr. Wilson: I am not saying to your Honor today that I have given up hope with respect to any paper in this case. We haven't got them; and we may not be able to get them. But I make no representation to your Honor today.

The Court: What do you think would be a reasonable cut-off time?

Mr. Wilson: I certainly think we ought to have another 90 days to deal with the situation.

The Court: I don't want to cut you short. If you have something specific, all right; but reviewing some of Mr.

1476 Schwartz's statements and mine wasn't the thing that was giving me so much concern as that other proposition.

Mr. Wilson: I won't persist with that line of discussion.

The Court: You may if you like; but that wasn't what was giving me so much concern.

Mr. Wilson: I think I have covered about all I need to. Your Honor has been very patient about this situation.

The Court: I will hear you in rebuttal if you want to speak further about it.

Mr. Schwartz: May it please the Court, I take a very extraordinary pleasure in introducing to the Court my

senior counsel, Colonel Dallas S. Townsend, Assistant Attorney General, Director of the Office of Alien Property.

THE COURT: Mr. Townsend, I am pleased to recognize you.

MR. TOWNSEND: I don't propose to argue the opposition to this motion, if the Court please. That task will fall to Mr. Schwartz who knows a great deal more about the case, after years of study, than I do.

I should like to make a statement touching the public interest in this matter, a statement based on conclusions come to by Congressional Committees, by previous Attorneys General and other public authorities.

The first observation I would like to make is that this property here, General Aniline & Film Corporation, is a very

1477 important facility in the national defense. Over 80 percent of its output would be required for national defense in the event of a military emergency. Its direct military potential is upwards of $60 million a year.

Secondly, these public authorities have all agreed that in the interest of greater usefulness to the national effort, and to the national economy, this property should be returned to private American operation.

Next, in the present state of the law, it is impossible to return this property to private American operation, as long as this litigation is pending. Consequently, having regard for those facts, I should like to say, on behalf of the Attorney General, that it will be his policy to press this litigation and all similar litigations at every point and on every front to a conclusion as promptly as it may be arranged consistent with the opinions of the Court and the processes of justice.

Looking now preliminarily at the present issue, it seems to me—and I respectfully submit—that the issues here argued are entirely foreclosed by the excellent opinion this Court has already rendered; and I only hope that the present motion will be disposed of in accordance therewith.

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MR. SCHWARTZ: Your Honor, in view of your remarks from the bench, I would not dream of boring you with a recapitulation of this proceeding up to the present; but

1478 I will trespass to the extent of reminding your Honor of what your Honor so well knows, the length of time this has been taking.

It was in 1949 that your Honor ordered discovery. You then wrote an opinion saying that in such cases as these, people were entitled to see all the records.

The Court has been steadfast in that ruling every since to this very day. Discovery is useless without all the papers.

Now, today, the Court is faced with a situation in which partial discovery is made. I believe the Court has already expressed itself that if it can be demonstrated that full discovery will never be made, the Court will not give any more time, in view of the public interest involved.

This case, your Honor, could become a never-ending affair. Plaintiff's counsel would be ingenious on each return to the Court to imagine a situation whereby time should properly be extended. Let us not forget that it was for the release of these documents that plaintiff was given until June 15 and then until July 15 and now proposes that it be given for some future time.

What has happened since that time? Three signal facts: The first is that plaintiff applied to the Swiss Government. In the Swiss Government's own words, the application was "for the purpose of full compliance with this Court's order of July 5, '49, the opinion of February

1479 of '53, and the Order of March 31".

This was denied by an order dated June 30. The Swiss Government denied the application to permit full compliance. Your Honor remembers that you gave this long period last February and March because then, by your opinion for the first time, the Swiss Government would be informed and could learn that the American Court intended that full production be made. They learned it, your

Honor, and by their order of June 30, 1953, they denied an application for full compliance with the American Judge's order—their kind of physiology.

They have flung down the glove; they will not——

THE COURT: That order was made by the——

MR. SCHWARTZ: The highest tribunal in Switzerland, composed of every member of the Cabinet, and their elected President, the organ beyond which there is no appeal.

THE COURT: That had not been done when my opinion came down?

MR. SCHWARTZ: No, sir; and it was for that type of application that you gave such a long point of time. That is, the order that Mr. Wilson minimizes today. He has shifted. He has moved over. He will produce this: and if not 500 genuine documents, 600, 700, 800.

You remember years ago I said, your Honor, the plaintiff

1480 was playing cards with the Court. "We will give you one if you insist; another if you whip us; a third if you threaten us with dismissal."

The only thing that will get all the papers is dismissal; and if you cannot get all the papers, then, as your Honor has said, that kind of discovery is useless.

The Swiss Government, then, has refused. When they investigated the Sturzenegger firm—no, I am sorry, the Chemie firm—your Honor remembered, but I had forgotten, there has been so much in this case—when they wanted to see whether I. G. Chemie was a German fellow, they put a stop order on the premises of both, sealed the whole shooting match; and they looked at everything about Chemie and everything about Sturzenegger, and all their subsidiaries and affiliates around Switzerland, and private safety deposit boxes, and what not.

We were very modest when we came to your Honor in '49. Plaintiff wanted all our papers. We wanted just all the papers in Chemie and Sturzenegger. Your Honor ruled, in your opinion of June of '49, that in such cases,

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there was a right to all the papers. That is the opinion of late in June, 1949.

The Swiss Government has seen every one of these pieces of paper. Secrecy? Individual rights? That didn't matter a bit to them. They wrote an expose about this thing.

1481 They mentioned the papers they thought appropriate to mention.

That is the opinion of June 23, 1949, your Honor. There you said, and your Honor will, I hope, stop me if you recall the words:

> "Here the claim of the defendants is that plaintiff was enemy-owned, controlled and tainted at the time its property was vested, and that long before the vesting, plaintiff had sought to conceal the true facts of its ownership and control by the use of subsidiaries and affiliates in various parts of the world. In such a case, every record of plaintiff, as well as of its subsidiaries and affiliates, may have a tendency to prove or disprove such claims of defendants. The Court, therefore, adheres to its previously-expressed view that full discovery should be made."

Your Honor, you had spontaneously expressed these views when we first came to you in about February of '49. The arguments lasted for several months, and you put that in your opinion.

The Court expressed the same views at least three times before the papers again came to your Honor. Does the Court recall how often plaintiff's counsel came with motions to be excused from the production of the Sturzenegger papers? It would be against the secrecy law; everybody would go to jail; great difficulties, social obliquity—all kinds of reasons were offered.

1482 The Court remained steadfast. They were never lifted from their obligation to produce the Sturzenegger papers.

In your opinion in February, you held that it was essential that the United States, as a defendant, should have

these papers. You said it was essential to their rights as a party defendant.

The first signal fact, your Honor, is that the Swiss Government, well aware of all of this, chooses not to permit full compliance with the order of discovery.

The second signal fact, your Honor, is that these waivers, as we have demonstrated time and time again, are an illusory affair. They never could produce all the papers; and they never will. And it culminates in this matter of the books of the bank. Mr. Wilson has said that his associate philosophically explained that the books contained the aggregate of the secrets. They ought to contain the aggregate of the secrets if they do not turn out to be forgeries, as Chemie's own books turned out to be. But let us assume that Sturzenegger kept only one set of books and that that set will actually come forward.

Did your Honor fully understand Mr. Wilson's explanation of what would appear? When all the waivers are in, they will then take the books and they will photostat certain pages; so in a book of accounts, we will get pages 1, 2,

but not 3; 4, 5, 6, but not 7.

1483 Suppose, your Honor, some of these great secrets appear on a page in which some non-secrets appear? Does your Honor know the technique that Swiss banks use in complying with orders of this District Court for their records? There is a case before Judge Letts, your Honor, in which the plaintiff, a Swiss Bank—I hold this up, and it consists, your Honor, for the record, of a photostatic copy of a photostatic copy, produced by a Swiss Bank, in a case pending in this District Court. Bank Waedenswil is the name of that bank. Your Honor may notice great black spaces in the middle of the page. Judge Letts had a matter before him some fifteen days ago, and he said that papers with holes in them—I am not quoting, but he, in effect, said papers with holes in them were not discovery of documents; and that plaintiff had better get up the complete document.

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But today Mr. Wilson has told the Court that when the books are produced, they will be excerpts, and page one but not page two; page three but not page four; and when the ledger, the journal is produced, with its chronology of entries, and some of them are secret and some are not secret, that is what they will do to the books, your Honor.

Now, your Honor, could plaintiff tell you more clearly that there will never be full discovery with our order? How long, your Honor, are we to be subjected to this evasive tactic of another few papers, another thousand, another

1484 twenty thousand, another 10 papers?

When they gave us the Chemle papers, your Honor, we worked on them for a year and a half; we proved that nine thousand had been abstracted from them. We made a motion before the Master; and the papers began to come grudgingly, reluctantly. The process is not over. We got about 5000 of the 9000 stolen out of the files.

How long is any defendant, much less the United States of America, to be bound by this kind of thing?

We appreciate that your Honor is doing justice; and that you are giving plaintiff all the time that is reasonably necessary; but there must come a time, your Honor, when it is clear that no more time is reasonably or unreasonably necessary. There came such a time in a famous case, your Honor, in the House of Lords, when the Republic of Liberia sued a man for only 4000 pounds in Britain. Four thousand pounds may have been a lot of money; but we submit that the matters at stake in this case are infinitely more important.

In 1875, Appeal cases, Volume 1, page 139, there is the report of the Republic of Liberia against Roy, where the Republic of Liberia sued the son of a former president or Secretary of the Treasury in England for 4000 pounds, said to be belonging to the Treasury of the foreign sovereign.

Defendant asked for discovery of certain papers which he said would show that his father really owned this

1485 money. I grant you that the trial judge gave them four or five postponements of time to produce the papers but when it appeared that the papers were not going to be produced, the Vice Chancellor, the Court of Appeal, and the House of Lords, in succession, in all the opinions reported, ruled that plaintiff's complaint was dismissed with prejudice on the merits.

You know, your Honor, this is the case that we did not find before your Honor wrote his opinion. It is our fault that we did not find it. But it is most startling how the three opinions, seriatim, in the case reflect the conclusions that your Honor reached. Three law Lords in succession, expounded on why it was appropriate and necessary that the complaint of this foreign sovereign be dismissed for failure to make discovery. Each one of them sounds a note that is to be found in your Honor's opinion of last February. They take up the question of the inherent power of a court to grant such an order. Your Honor took up that question. They reached the same conclusion. They say it would be impossible that judicial business could exist, could continue, could be carried on, if those who did not obey proper orders of a court, did not have the sanction that on refusal to obey, they be dismissed. Justice cannot hang in mid air forever. They take up the question that my senior, Colonel Townsend, has referred to today. They

1486 take up the question of how long can a defendant be required to hold intact the property being sued for. You see, this unfortunate defendant was required to pay the 4000 pounds into Court; and the case had been pending, like this case, for four years. It took four years almost to the day for the discovery to be asked and the complaint to be dismissed. They take it up and they say, and this is the first law Lord, the Lord Chancellor:

> "Can anything be supposed more calculated to lead to injustice and wrong than that money should be taken and impounded in the Court of Chancellory upon a case alleged by a plaintiff, which might be displaced

by documents in its possession, and that he, all the while, is to hold his suit, retain the money in Court, and refuse to divulge the documents which would overthrow the title he has alleged?"

That is the case we have today. Upon a title alleged by plaintiff, the United States of America has given him access to its courts, to sue for the return of property, an enormous piece of property, valued by the plaintiff at $100 million in his complaint.

In this statute, it is provided that:

"So long as this plaintiff's case pends, the defendant, the Alien Property custodian, the Attorney General, the United States, must hold intact this property."

So, so long as he can persuade your Honor to give him

1487 more time, three months, four years, eight months, one year,—all those terms belong in this situation—the defendant must hold this property intact.

Your Honor, can anything be calculated more to lead to injustice and wrong, in the words of the Lord Chancellor? Your Honor knows, Mr. Wilson knows, everybody in this court room knows, that full discovery will never occur.

The principles, therefore, that your Honor has expounded—and those principles, your Honor, are part of a main stream of Anglo American justice—that no one shall sue in this court or in the courts of any country, without complying with our rules—that justice must be done by the facts being exposed—those principles, your Honor, dictate today that you enter an order of dismissal; because your Honor knows, I say again and again and again, there will never, there can never be full discovery.

The highest tribunal in Switzerland, the organ of the Government; the combination of the judiciary and the executive and the legislature, has said to your Honor, "No"; and they have said it deliberately and knowingly, and—I

won't say more. They have certainly said it deliberately. Their decision is part of this record. It was produced in response to your Honor's instructions that they go out and see whether responsible Swiss officials will allow the documents to come in. They are not in. They will never be in, your Honor.

1488 Justice, the upholding of the dignity of this Court, and the upholding of the rights of the defendants require that your Honor recognize the fact, today and enter an order of dismissal.

Thank you.

Mr. Wilson: If your Honor please, with respect to the last remarks of Mr. Schwartz, which were the remarks of Colonel Townsend, as well, it is the Congress of the United States which has decided, by Section 9(a), pendente lite, there shall be no sale of litigated alien property. Now, that has nothing to do with your administration of justice in this Court; that has nothing to do with how you decide this motion today. If we are entitled, in fairness and reasonableness, to an extension, your Honor will give it to us without regard to the situation which Congress has created. If your Honor doesn't give it to us, I sincerely believe that it cannot be because you are influenced by an Assistant Attorney General coming down here and making representations to your Honor about problems of expediency on the part of the Government in the handling of alien property, in a way which Congress has imposed upon him.

The whole argument of the Government here today is unfair in every sense of the word. I cannot believe that you will be influenced by problems of expediency on the part of the Department of Justice as to whether or not you will give

1489 us more time.

These gentlemen are trying to get 9(a) amended. That is their proper recourse. Let them make these practical representations to the Congress of the United States, which stayed their hand in the first place; and not come down here before your Honor and try to press the prestige

of the Department of Justice of the United States upon your Honor, that you shouldn't give us more time, if you think we are entitled to more time, simply because it puts the Department of Justice into a practical dilemma.

Your Honor will not have put them in that dilemma. The Congress of the United States, which you and the Department of Justice and I, as a citizen of the United States, recognize constitutionally, has a right to supervise this problem; has decreed that it shall be done.

I say to the Court that it is hitting way far below the belt to come here today and try to influence by anything but pure considerations of reason and right, and not considerations of Governmental expediency.

Now, their hitting below the belt persists when Mr. Schwartz gets up and he talks about forgeries in the Chemie books; and he talks about the withholding of documents by Chemie, and the fact that he hasn't so far succeeded in getting at least half of those.

Now, your Honor is a great judge, but your Honor is

1490 still human. Of course, we lawyers indulge in the presumption, which at times is a very silly presumption, that judges' mental processes are not influenced by anything but purely correct and legalistic considerations.

I say to the Court that the Chemie books are not forgeries; and Mr. Schwartz cannot prove they are forgeries. You may decide for yourself whether the fact that Mr. Schwartz comes in here as a representative of the Government of the United States is going to influence you more in that representation than the representation which I make to the contrary to you, as a member of the bar of this Court for 30 years, and personally known to you all of that time. Who is making the accurate representation?

When it comes to the question of the nine or ten thousand documents that Chemie didn't produce, it turned out that five or six of them were second and third carbons of papers which had been produced; and to satisfy Mr.

Schwartz, we brought over the letter press copies, and the yellow copies; and he took them and photostated them.

We have supplied a great many others; and the ones which are not withheld are withheld on the basis of privilege; and that question is being litigated before the Special Master.

It is palpably unfair for any lawyer, much less a representative of the great Department of Justice of the
1491 United States of America, to come into this Court and again attempt to influence this Court by the suggestion that Chemie has forged books, and has withheld important documents, to influence your Honor's human mind in doing what is fair and reasonable in this situation.

Now, when it comes to the question of this case in Liberia, we do a little work in this case too, you know, your Honor. All of the intelligence in the United States is not reposed in the Department of Justice. Neither is all the industry; and neither is all the righteousness too, may I say.

The discussion of the Liberian case goes back to the merits of your Honor's decision; and I am not going to debate it, because this is neither the time nor the place to debate it. However, if you should have the time for collateral reading, which I know your Honor has little of,—but your very able law clerk may want to consider it,—ask him to look at Nelson vs. Nelson Lines from Liverpool in 1906 from 2 Kings Bench 217, in which a similar question was discussed 30 years after the Liberian case, because that case was in 1875.

Fairwell Lord Justice in the Nelson case, at page 226—if you gentlemen of the Department of Justice have the industry and interest to look it up—said:

> "Counsel relied on what was said by Lord Hatterly,
> 1492 in Republic of Liberia v. Roy; but I am sure that those observations were not intended to extend beyond the circumstances of the particular case.

Now, as I say, I can distinguish the Liberian case for a variety of reasons. I don't intend to take this time to do it, because if I did, I would be arguing the merits of your Honor's decision of last February.

I only say to the Court, in conclusion, that discovery of the quantity of papers involved in this case must, of necessity, if for no other reason, be largely piece meal. We are striving to get all the papers. We may fail. But I do not assert today that we shall. I submit to the Court that in view of your Honor's very generous attitude toward our problem, after having rendered an opinion which your Honor, yourself said was a case of first impression in Anglo-Saxon law, or in American jurisprudence, that we should have the further time, in the interest of fair play, to endeavor as best we can, albeit we exhaust ourselves, in an effort to comply with this Court's order.

I repeat to the Court that it is incredible to me that it should be the argument of the Department of Justice, or that it should be the determination of this Court, that there are any circumstances hardly conceivable, and certainly there are no circumstances presented here today, which would cause your Honor to approve the action of the Department

1493 of Justice in turning its back to the examination of the documents which are made available to them at this time.

I say to the Court that prevading this whole case is the problem of good cause shown. Your Honor, good cause shown never loses its force and effect under Rule 34. You had to deal with good cause when you dealt with the original order. You had to deal with good cause when you were writing your opinion of last February. You will have to deal with good cause when you consign me to oblivion, if you should, by deciding to dismiss this case. It sticks on this case like glue. There isn't any point of this case where either the Court or the Department of Justice can shake off the element of good cause.

Good cause is here with us today. Not as a spectre but

as an absolute condition to your Honor's consideration of this motion for an extension.

Your Honor must be able to say, as a matter of law,—because the facts are all one way here today—that good cause has been shown, while Mr. Schwartz does not have to look at these papers, why forsooth, these papers are not sufficient, and why we must produce all of them. I submit it is impossible for this Court, or any other Court, to say, as a matter of law, that with this quantity of papers, this kind of papers on hand, touching upon the vital characters in the play, and relating to the subject

1494 matter of this case, that you can find good cause for a dismissal, or even that you can find good cause to contemplate—although I say this quite academically—for the production of any others of the Sturzenegger papers. There is utterly no evidence here that any paper of importance is missing. Here again, I am reminded of the fact that Mr. Schwartz distorted the explanation about the books. Are we to be condemned because we come before your Honor to explain to you these mechanical details? Is this not the place for us to explain to your Honor what we are doing and why we are doing it, and what we expect? The explanation about partial books is against the possibility of not getting all the books. There is no evidence before your Honor that we won't get all the books.

Your Honor cannot deal with this problem of absence of books or absence of papers in a vacuum. You cannot deal with it from the basis that, because in some other case, a paper was missing, there must be a missing paper in this case. You cannot deal with this case on the basis that page three of the ledger is missing, as Mr. Schwartz says. We may find a way to solve that problem when we get to it. I don't want to continue to recur to the idea that this is a tremendously complicated project; but its complications and its size cannot help but color the principle involved.

1495 If the Court has been this kind to us for eight months, I cannot understand two things: Why an-

other extension shouldn't be allowed; and I cannot understand that in the meantime the Court would encourage the Department of Justice to turn its back on an inspection of these papers.

I have said to your Honor from the very beginning of this case that the Department of Justice doesn't want to see these papers. They want a dismissal, so they won't have to try this lawsuit on purely technical grounds.

I could have continued, but desisted when I tried your Honor's patience, although I know your Honor will give me all the time I need, to analyze those five or six grounds in your Honor's opinion, as to why Mr. Schwartz says the Sturzenegger papers are important.

I have heard him call things illusory in this case. I say those grounds reek with fiction. They are illusory. I say that Mr. Schwartz has or can have, if he wants it, information upon all those subjects. I repeat, I don't think the Department of Justice wants to examine the Sturzenegger papers. I think they far would prefer an order of dismissal in this case than both the burden and risk of making an inspection.

I submit, there is no reason to think that on this 20th day of October, we should not have the further kind and reasonable consideration of the Court to pursue

1496 this matter again in view of the showing which we have made.

Filed Mar. 12, 1954 - Harry M. Hull, Clerk.

1497 Transcript of Hearing Before Chief Judge Laws, December 17, 18, 1953.

1542 Mr. Schwartz: . . . We submit there is sometimes a principle involved, that the integrity of the American courts must also be sustained. If these people come and sue and sue for four years, and they cause us all the trouble they did, and they do all the things they did, they should pay the costs. They are the unsuccessful party. They have harassed the United States Government for four

or five years. They have imposed a great damage upon the United States in addition to the expenditures for our salaries and the like. They have forced the United States to keep property intact for four years. There are principles involved, as well. We submit we are therefore entitled to an award of costs.

The Master's reference, that is another matter. The Master's reference was the action of the Court, and had peculiar circumstances. It would not be taxed under an order of costs. When the Court appointed the Master it reserved the question of the Master's expense, as to whether that should be imposed on both parties, or partly . . . .

1544 THE COURT: . . . It is true you prevailed, but you prevailed largely, as I ruled, because a foreign nation would not make it possible for a plaintiff to produce records which it in good faith ought to produce. "With prejudice" gets rid of the case finally. I don't think there is any question about that. But we really haven't had in this case a determination as to whether this plaintiff is a neutral or not. And we have a determination in the case he acted in good faith, or the attempts at good faith.

MR. SCHWARTZ: But on a certain area involving papers.

THE COURT: That is right.

MR. SCHWARTZ: Let us be explicit, Your Honor.

THE COURT: Under those conditions, it seems to me that it wouldn't do violence to anybody to let those costs fall evenly.

1547 THE COURT: I am frank enough to say on that I am not inclined to make that. The only reason for making them would be on a basis entirely contrary to the basis of my ruling, and until the Court of Appeals makes a different ruling, I don't see any need for it. That is the short answer to it. If they take a different ruling, I will have to make it.

1573

1573 Filed October 21, 1948. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. (also known as INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.); and formerly named INTERNATIONALE GESELLSCHAFT FUR CHEMISCHE UNTERNEHMUNGEN A. G. (I. G. CHEMIE) and SOCIETE INTERNATIONALE POUR ENTREPRISES CHIMIQUES S. A. (I. G. CHEMIE), A corporation, Address: Basle, Switzerland,

Plaintiff,

v.

TOM C. CLARK, Attorney General of the United States, as Successor to the Alien Property Custodian, Address: Department of Justice, and WILLIAM A. JULIAN, Treasurer of the United States, Address: Treasury Department,

Defendants.

Complaint for Return of Seized Property.

FIRST COUNT.

1. This action arises under the Fifth Amendment to the Constitution of the United States and the Trading with the Enemy Act of October 6, 1917, as amended, (U. S. C. Title 50, Appendix, Sections 1 to 38, inclusive). Both defendants are particularly sued under Section 9(a) of said Act and are required to retain the property or money sought herein pending the outcome of this action.

1574 2. Plaintiff is a corporation organized under the laws of the Confederation of Switzerland, has its principal office at Basle, Switzerland, and is and always has been a citizen of Switzerland. Its name has been changed from Internationale Gesellschaft fur Chemische Unternehmungen A. G., (I. G. Chemie) and Societe Inter-

nationale pour Entreprises Chimiques S. A. (I. G. Chemie) to Societe Internationale pour Participations Industrielles et Commerciales S. A. and Internationale Industrie- & Handelsbeteiligungen A. G.; and it is now commonly sometimes called "INTERHANDEL".

3. Plaintiff is not, nor at any of the times herein specified or material hereto has been, an enemy or ally of enemy of the United States within the meaning of such terms under the said Trading with the Enemy Act, nor a national of a designated enemy country, within the meaning of any law, executive or vesting order or governmental regulation.

4. On and prior to February 16, 1942, and continuously thereafter, plaintiff was and is the owner of 2,050,000 shares of the Common B stock, and 455,448 shares of the Common A stock, of *General Aniline & Film Corporation*, of a value in excess of One Hundred Million Dollars ($100,000,000).

5. On February 16, 1942, the Hon. Henry Morgenthau, Jr., as Secretary of the Treasury, issued a certain Vesting Order whereby he illegally seized the aforesaid shares of stock and vested the same in himself as such Secretary; that thereafter, on, to-wit, April 24, 1942, the Hon. Leo T. Crowley, then Alien Property Custodian and one of the predecessors of the defendant Clark in this action, issued his Vesting Order No. 5, whereby he illegally vested the same shares in himself as such Alien Property Custodian; that on the same date, to-wit, April 24, 1942, the said Secretary of the Treasury, at the request of the then Alien Property Custodian, delivered, transferred and assigned said shares to the said then Alien Property Custodian.

6. That effective on, to-wit, October 15, 1946, by Executive

1575 Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Prop-

erty Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said shares are now in the possession of one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, but they are held illegally by him.

7. That said shares of stock were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States and without the consent of the plaintiff.

8. On or about February 1, 1943, and also on or about June 2, 1948, plaintiff duly filed with the defendant Clark Notices of Claim under oath, with respect to the aforesaid shares of stock, in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendant Clark is retaining the aforesaid shares of stock, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and they should be returned to the plaintiff as the sole owner thereof.

10. The defendant, William A. Julian, Treasurer of the United States, is sued as a defendant in this Court by virtue of the provisions of Section 9(a) of the said Trading with the Enemy Act, because cash dividends which have been received by the defendant Clark and his predecessor Custodians upon the shares of stock described herein are on deposit with and in the possession of the defendant Julian in an account in the United States Treasury
1576 in the name of the defendant Clark, and are wrongfully and illegally held by the said defendant Julian.

Wherefore, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the shares of stock described in the 4th paragraph hereof.

(2) Judgment that the defendants, respectively, account

for and deliver and transfer said shares of stock to the plaintiff, together with all dividends (including stock of the plaintiff corporation) and avails thereof and all right, title and interest therein.

(3) Judgment for the costs of this action.

SECOND COUNT.

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On and prior to February 15, 1943, and continuously thereafter, plaintiff was and is the owner of 176 shares of the Common A stock of *General Aniline & Film Corporation*, of a value in excess of Thirty-five Thousand Dollars ($35,000.00).

5. On February 15, 1943, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 907, whereby he illegally seized the aforesaid shares of stock and vested the same in himself as such Custodian.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered
1577 by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said shares are now in the possession of one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, but they are held illegally by him.

7. That said shares of stock were seized and vested and are being held without warrant of law and in violation of

the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid shares of stock, in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendant Clark is retaining the aforesaid shares of stock, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and they should be returned to the plaintiff as the sole owner thereof.

10. The defendant, William A. Julian, Treasurer of the United States, is sued as a defendant in this count by virtue of the provisions of Section 9(a) of the said Trading with the Enemy Act, because cash dividends which have been received by the defendant Clark and his predecessor Custodians upon the shares of stock described herein are on deposit with and in the possession of the defendant Julian in an account in the United States Treasury in the name of the defendant Clark, and are wrongfully and illegally held by the said defendant Julian.

Wherefore, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the shares of stock described in the 4th paragraph hereof.

1578 (2) Judgment that the defendants, respectively, account for and deliver and transfer said shares of stock to the plaintiff, together with all dividends (including stock of the plaintiff corporation) and avails thereof and all right, title and interest therein.

(3) Judgment for the costs of this action.

Third Count.

13. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 24, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6748, whereby he illegally seized the sum of Nine Hundred Seventy-five Thousand, Two Hundred Forty-four Dollars and Seventy Cents ($975,244.70), comprising the aggregate of balances to the credit of four certain accounts in the name of and belonging to the plaintiff in the banks and for the amounts hereinafter more fully described, and the said Markham vested the same in himself as such Custodian. The names of said banks and the dollar balances to the credit of plaintiff's accounts therein are respectively stated as follows:

Bank of the Manhattan Co.	$182,092.90
Irving Trust Co.	186,302.08
Credit Suisse, New York Agency	288,669.07
Swiss Bank Corp., New York Agency	318,180.65
Total	$975,244.70

5. At all times on and prior to June 24, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said accounts and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all

1579 authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property

Custodian, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That said bank accounts and the moneys, funds and credits thereof were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 7, 1943, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of Nine Hundred Seventy-five Thousand, Two Hundred Forty-four Dollars and Seventy Cents ($975,244.70), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate

1580 possession of the sum of Nine Hundred Seventy-five Thousand, Two Hundred Forty-four Dollars and Seventy Cents ($975,244.70).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from June 24, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

FOURTH COUNT.

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 26, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6767, whereby he illegally seized moneys, funds and credits in a certain account in the Bank of the Manhattan Company, New York City, N. Y., more fully described in said Vesting Order, and vested the same in himself as such Custodian. Plaintiff is informed and believes and therefore avers that the amount so seized and vested is not less than Three Hundred Eight Thousand, Seven Hundred Fifty Dollars ($308,750.00).

5. At all times on and prior to June 26, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered

1581 by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but

is held illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of, to-wit, Three Hundred Eight Thousand, Seven Hundred Fifty Dollars ($308,750.00), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

Wherefore, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Three Hundred Eight Thousand, Seven Hundred Fifty Dollars ($308,750.00).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per
1582 annum from June 26, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

Fifth Count.

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 26, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant

Clark in this action, issued his Vesting Order No. 6768, whereby he illegally seized the sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50), comprising moneys, funds and credits in a certain account in The National City Bank of New York, New York City, N. Y., more fully described in said Vesting Order, and vested the same in himself as such Custodian.

5. At all times on and prior to June 26, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with and in the

1583 possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect

to the aforesaid sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

Wherefore, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from June 26, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

1584 Sixth Count.

13. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 26, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6769, whereby he illegally seized the sum of Forty-seven Thousand, One Hundred Twenty-five Dollars ($47,125.00), comprising moneys, funds and credits in a certain account in The National City Bank of New York, New York City, N. Y., more fully described in said Vesting Order, and vested the same in himself as such Custodian.

5. At all times on and prior to June 26, 1946, and continuously thereafter, plaintiff was and is the owner of the

aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian, as

1585 Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of Forty-seven Thousand, One Hundred Twenty-five Dollars ($47,125,000), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

Wherefore, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Forty-seven Thousand, One Hundred Twenty-five Dollars ($47,125.00).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from June 26, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

Seventh Count.

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

1586 4. On October 14, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Supplementary Vesting Order No. 7874, whereby he illegally undertook to seize and vest in himself as such Custodian the sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00), comprising moneys, funds and credits in a certain account in the Chase National Bank of the City of New York, N. Y., more fully described in said Vesting Order.

5. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General.

6. On February 16, 1948, one of the defendants, namely, Hon. Tom C. Clark, Attorney General of the United States,

as the successor to the Alien Property Custodian, issued an amendment to said Vesting Order No. 7874, and pursuant thereto and to the aforesaid Executive Order, the defendant Clark illegally seized the said sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00), comprising the moneys, funds and credits described in paragraph 4 of this count and more fully described in said Vesting Order; and said sum of money is now held by the defendant Clark, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held wrongfully and illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. At all times on and prior to October 14, 1946, and continuously

1587 thereafter to the present date, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

8. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

9. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

10. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00);

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from October 14, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. (Also known as INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.); and formerly named INTERNATIONALE GESELLSCHAFT FUR CHEMISCHE UNTERNEHMUNGEN A. G., (I. G. CHEMIE), and SOCIETE INTERNATIONALE POUR ENTREPRISES CHIMIQUES S. A. (I. G. CHEMIE).

By JOHN J. WILSON, *Its Attorney.*

1588 DISTRICT OF COLUMBIA, ss:

I, WALTER GERMANN, Manager of the corporation named as plaintiff in the above entitled civil action, do solemnly swear that I have read the foregoing complaint and know the contents thereof; and that I verily believe the statements made in said complaint to be true.

/s/ WALTER GERMANN
WALTER GERMANN

[Sworn to October 21, 1948]

1589 Filed November 5, 1948. Harry M. Hull, Clerk.

Motion That Depositions Shall Not Be Taken, or That They Shall Be Taken in Basle, Switzerland, and That the Court Shall Fix the Time for the Taking Thereof.

Comes now the plaintiff, by its undersigned attorneys, and moves the Court under Rule 30(b) of the Federal Rules of Civil Procedure for an order that certain depositions, hereinafter described, shall not be taken, or that they shall be taken in Basle, Switzerland, and that the Court shall fix the time for the taking of the depositions, wherever taken.

On October 27, 1948, the defendants served notice upon the undersigned, as attorneys for the plaintiff, to take the depositions upon oral examination, in this City, of Hans Starzenegger, Felix Iselin and August Germann, all of Basle, Switzerland, respectively, on December 1st, December 15th, and December 29th, 1948. The notice describes these individuals as officers or managing agents of the plaintiff, and is phrased to the effect that the defendants will examine the plaintiff through them; and it is obvious that plaintiff is expected to produce these individuals.

The grounds of this motion are:

1. That the three individuals are neither officers nor managing agents of the plaintiff, and, therefore, the notice served upon counsel for the plaintiff is not sufficient to produce them; and

1590 2. That none of the three individuals has been served with a proper notice.

While the undersigned feel that they can work out with the attorneys in the Department of Justice the fixing of the time for the mutual convenience of all involved, request for the Court to fix the time is included in this motion as a matter of procedural precaution since the entire affair is being submitted to the Court.

[Signed by counsel for plaintiff.]

1622 Filed November 15, 1948. Harry M. Hull, Clerk.

Notice to Take Deposition Upon Oral Examination.

To: John J. Wilson, Esquire, 815 Fifteenth Street, NW, Washington, D. C., Attorney for Plaintiff.

Please Take Notice that the defendants will examine in the above entitled action the plaintiff Societe Internationale pour Participations Industrielles et Commerciales S. A. etc. (I. G. Chemie), through Hans Sturzenegger, Felix Iselin, and August Germann, officers or managing agents thereof, having their offices

1623 in Basle, Switzerland, upon oral examination, pursuant to the Federal Rules of Civil Procedure, before a Notary Public or other officer authorized by law to administer oaths and take depositions.

The place of such examination will be Room 501, Hutchins Building, 939 D Street, NW, Washington, D. C.

The time of such examination will be:

Hans Sturzenegger — December 4, 1948, 10 a. m.
Felix Iselin — December 15, 1948, 10 a. m.
August Germann — December 29, 1948, 10 a. m.

The examination will continue from day to day, or at such other time to which the parties may agree, until completed.

You are hereby notified that you may appear and take part in said examination in accordance with the Federal Rules of Civil Procedure.

Dated: October 27, 1948.
Washington, D. C.

[Signed by counsel for defendants]

1624 Filed November 15, 1946. Harry M. Hull, Clerk.

Affidavit of Olga H. Hoffmann in Opposition to Motion That Depositions Shall Not Be Taken, or That They Shall Be Taken in Switzerland, etc.

DISTRICT OF COLUMBIA, ss.:

Olga H. Hoffmann, being duly sworn, deposes and says:

1. I am an attorney employed in the Litigation Branch, Office of Alien Property, Department of Justice. I am one of the attorneys assigned to this case. This affidavit is submitted to present to the court certified translations of those portions of the German documents involved in this motion with respect to which the defendants differ with the translations submitted by the plaintiff.

I was born and educated in Germany. I studied law and political economy at Albertus University, Koenigsberg, and became a member of the junior bar in 1926 and a member of the senior bar in 1931. From 1931 to 1933 I was a judge of the District Court ("Landgericht") in Berlin. I am a member of the bar of the District of Columbia.

From January to October of 1945 I was employed as a translator of German, French, Dutch and other languages by the Navy Department. From October 1945 to August 1946 I was employed

1625 as a translator of German and French with the War Department, United States Chief of Counsel, at the War Crimes Trial in Nurnberg.

2. On the cover page of the "Statuten," the articles or by-laws of the plaintiff corporation, there appears a line, which is omitted in the plaintiff's translation. That line, "Genehmigt in der Generalversammlung vom 19. Dezember 1945," in translation, reads, "Approved by the Meeting of Stockholders of December 19, 1945."

3. Section 21 of the by-laws as translated by the plaintiff reads as follows:

1625

Each member of the board of directors must hold ten shares which shall remain deposited "in der Gesellschaftkasse" with the company's treasurer during its term of office and after its expiration until its discharge by the general meeting, and which may be neither sold nor mortgaged.

The German word "Gesellschaftskasse" means "company's safe" and not "treasurer." "Gesellschaft" means "company" and "kasse" means "money chest," "till" or "safe." The German word for "treasurer" would be "schatzmeister."

4. Section 22, second sentence of the by-laws, has been translated by the plaintiff as follows:

The board of directors shall appoint a "Protokollführer" secretary who need not necessarily be a member of the board.

The word "Protokollführer" means "minutes keeper." To translate it as "secretary" is not entirely incorrect, but it is apt to convey an impression of the dignity or rank of the person in question which is not in keeping with the simple clerical position of a "Protokollführer." That is, a Protokollführer is not a secretary in the sense of a corporate officer; but rather in the sense of a stenographer.

5. Section 26 of the by-laws has been translated by the plaintiff as follows. In the three underscored instances in which I disagree with the plaintiff's translation, I have inserted the German

1626 word and followed it with my translation.

Section 26.

The board of directors is the "geschäftsleitende" *administrative* [business-conducting] body and represents the company both "gerichtlich und aussergerichtlich" *judicially and extra-judicially* [in and out of court].

It holds all powers not reserved to other bodies.

The board of directors may appoint from its midst

delegates or a committee to supervise business operations more closely or to cooperate in important resolutions of the management, whom it is empowered to nominate and whose terms of engagement it shall fix, it may also appoint "Prokuratrager" *proxy-holders* [employee agents with power to sign].

The company is bound only by the joint signature of two persons authorized to sign on its behalf. The board of directors shall designate those persons who are authorized to sign and the manner in which the signatures shall be affixed.

The first point of difference is the proper translation of "geschaftsleitende." "Geschaft" means "business" and "leitende" means "conducting." The proper translation should, therefore, be "business-conducting."

The second point of difference is the proper translation of the term "gerichtlich und aussergerichtlich," translated by the plaintiff as "judicially and extra judicially." Such a translation, while not literally incorrect, does not appreciate that the German term is a technical legal phrase. "Gerichtlich und aussergerichtlich" means "in and out of court."

The third point of difference is the proper translation of "Prokuratrager," which is again a technical legal term. It is translated by the plaintiff as "proxy-holders." The term is one in commercial law signifying a person who can act and sign for a commercial entity, but who nevertheless remains an employee and not a principal.

1627 6. I have examined a document in the files of the Office of Alien Property which purports to be a photostat of a printed copy of the "Statuten" or articles or by laws of the plaintiff corporation as amended on February 20, 1929.

Section 24 of those 1929 by-laws is substantially identical with Section 26 of the present by-laws, adopted in December 1945. There follows a comparison of the texts of the

former Section 24 and the present Section 26. While I disagree with the plaintiff's translation of the present Section 26 (see para. 5, *supra*) I have here adopted it and have translated the former Section 24 in the same manner, so as to show the substantial identity of the two Sections.

Former Section 24	*Present Section 26*
GERMAN	GERMAN
. . .	. . .
TRANSLATION	TRANSLATION
The board of directors is the administrative *authority* and represents the company both judicially and extra judicially. It holds all powers not reserved to other bodies. The board of directors may appoint from its midst delegates or a committee	The board of directors is the administrative *body* and represents the company both judicially and extra judicially. It holds all powers not reserved to other bodies. The board of directors may appoint from its midst delegates or a committee
1628 to supervise business operations more closely or to cooperate in important resolutions of the management, whom it is empowered to nominate and whose terms of engagement it shall fix, it may also appoint proxy holders.	to supervise business operations more closely or to cooperate in important resolutions of the management, whom it is empowered to nominate and whose terms of engagement it shall fix, it may also appoint proxy holders.
The company is bound only by the joint signature of two persons authorized to sign on its behalf. The board of directors shall designate	The company is bound only by the joint signature of two persons authorized to sign on its behalf. The board of directors shall designate *those persons who are authorized to sign and the*
the manner in which the signatures shall be affixed.	manner in which the signature shall be affixed.

/s/ OLGA H. HOFFMANN.

[Sworn to Nov. 12, 1948]

1629 Filed November 15, 1948. Harry M. Hull, Clerk.

Affidavit in Opposition to Motion That Depositions Shall Not Be Taken, or That They Shall Be Taken in Switzerland, etc.

District of Columbia, ss.:

David Schwartz, being duly sworn, deposes and says:

I am an attorney employed in the Litigation Branch, Office of Alien Property, Department of Justice, and I am directly responsible for the conduct of this case on behalf of the defendants. I am familiar with the subject matter of the case and with what has been done by the parties heretofore.

This affidavit is submitted, together with accompanying points and authorities and translations certified by Olga H. Hoffmann, in opposition to the motion of the plaintiff, I. G. Chemie, that the deposition of the plaintiff by its three named officers not be taken,

1630 or that the deposition be taken in Basle, Switzerland. . . .

1632 We believe this deposition to be indispensable to the adequate preparation of the defense of this suit and that the right to take it is guaranteed to the defendants by the Federal Rules of Civil Procedure. We further believe that the officers in question are those of the plaintiff's officers who were in charge of, and had knowledge of the relations of the plaintiff with I. G. Farben, the matters underlying this case. They are, therefore, the "officers or managing agents" of the plaintiff, whose nonappearance for the taking of the plaintiff's deposition will subject the plaintiff to the sanctions of Rule 37(d).

Attachment 1 to this affidavit is a statement by the plaintiff giving the names and dates of office of the thirteen persons who have been its directors or officers at any time since 1938. Of the eight who were appointed before 1941, five have died or resigned. We seek to examine the plaintiff by the remaining three, since they are the only present

1632

officers of the plaintiff whose tenure extends back into the pre-war years. By reason of this lengthy tenure the three are peculiarly fitted to testify with respect to the relations between Chemie and Farben over the past two decades and with respect to other permissible matters in connection with the defense of this suit.

August Germann has been a member of the board of the plaintiff since its incorporation in 1928. Felix Iselin has been a member of the board since 1929 and its chairman since 1940. In this latter position he succeeded Hermann Schmitz, the president and financial genius of I. G. Farben.

1633 Hans Sturzenegger has been a member of the board of the plaintiff since 1940 and acted as its representative before that time. Mr. Sturzenegger occupies a unique position in relation to the plaintiff which fits him perhaps best of all to testify with respect to the enemy taint of I. G. Chemie and the other matters open to the defendants at this time. He is as close as is possible to an embodiment of the plaintiff corporation, for he is the foremost figure in both its control and stock ownership.

He occupies his unique position by virtue of his connection with the banking firm of Ed. Greutert et Cie. of Basle, Switzerland. He joined that firm in 1931, became a co-partner in 1938, and, after Mrs Greutert's death in 1939, he became the sole unlimited partner. The name of the firm was at that time changed to H. Sturzenegger et Cie.

H. Sturzenegger et Cie. and, therefore, Hans Sturzenegger personally, occupy the leading position in a circular chain of Swiss corporations which we term the Greutert Complex. (The circular nature of the Complex is charted on Attachment 2, which is based on a report of the Swiss

Compensation Office, a branch of the Swiss Government.) As of 1940, and presumably thereafter, the Complex had record ownership of 39% of the shares of I. G. Chemie, representing 14% of its paid-in capital. (See attachment 2, two charts showing the distribution of voting and paid-in stock interests in I. G. Chemie, based on statements of the Swiss Compensation Office and of the plaintiff.) There can be no dispute that I. G. Chemie is controlled by or through the Complex and that the Complex is the largest active stockholder in I. G. Chemie. The enemy taint of the Complex will be one of the important issues in the case.

Hans Sturzenegger has, moreover, personally been active in the cloaking relations of I. G. Chemie or Sturzenegger et Cie., or both,

1634 with I. G. Farben. The Swiss Compensation Office has stated that Hans Sturzenegger has admitted that throughout the war years he acted as cloak for Farben of shares of the selling company for Farben's products in Greece. This cloaking began in the 1930's by Eduard Greutert and was succeeded to by Mr. Sturzenegger in 1940. The same source states that Mr. Sturzenegger made a similar admission with respect to shares of the outlet for Farben's products in Roumania. Likewise, that he also admitted that in 1940 he procured for I. G. Farben a Swiss citizen to act as the cloak for several of I. G. Farben's firms in Latin America, and that he, Sturzenegger, thereafter forwarded "one or two" letters from this cloak to I. G. Farben. Likewise, that he also admitted that in 1939 he negotiated "in Germany" for a dividend guaranty by I. G. Farben to the Swiss stockholders of a Dutch corporation created to act as an I. G. Farben cloak in Holland. Among the Swiss stockholders in this Dutch corporation

were a wholly owned subsidiary of I. G. Chemie and a corporation in which H. Sturzenegger et Cie. owned at least a substantial stock interest. Payments by Farben on this guaranty continued throughout the war.

These admissions demonstrate that Mr. Sturzenegger was extraordinarily close to I. G. Farben, both personally and on behalf of his firm and of I. G. Chemie.

B.

In support of our contention that the three named directors are the active officers of the plaintiff (Point I of the accompanying memorandum of law), there are attached hereto a copy of a cable dated July 22, 1941, from I. G. Chemie to Werner K. Gabler (Attachment 4), and a copy of Mr. Gabler's letter of July 29, 1941, transmitting the cable

1635 to the Treasury Department (Attachment 5). The cable from I. G. Chemie states, in part, "all five directors [including the three involved in the instant motion] participate in the conduct of the company business and are responsible for it. Any two of the directors are entitled [sic] signs jointly on behalf of the company." There is also attached a copy and a translation of a printed announcement by the plaintiff in September 1940 of the names and signatures of the persons authorized to sign for it (Attachment 6). The three officers under discussion are included in this announcement.

C.

In opposition to the plaintiff's alternative motion that the deposition be ordered taken in Switzerland, there are attached copies of two notes from the Swiss Government to the American Legation at Berne, Switzerland (enclosure

to Despatch No. 15069, April 23, 1947, Attachment 7; enclosure No. 1 to Despatch No. 15448, September 16, 1947, Attachment 8 hereto). These notes, to whose presentation to this court the Department of State has consented, show that it is the firm and repeatedly stated position of the Swiss Government that it is illegal to take a deposition in Switzerland. The Swiss Government regards the taking of a deposition as a judicial function reserved exclusively to the Swiss courts, which act only through letters rogatory. If, then, the deposition be ordered taken in Switzerland, it cannot take place at all.

The statements of the Swiss Government were in response to inquiries prompted by the Department of Justice. The Department of Justice was seeking to facilitate its defense of such suits as the instant one by Swiss plaintiffs under Section 9(a) of the Trading with the Enemy Act. In the course of these efforts, about the summer of 1947, a representative of the Department of Justice communicated the problem to John J.

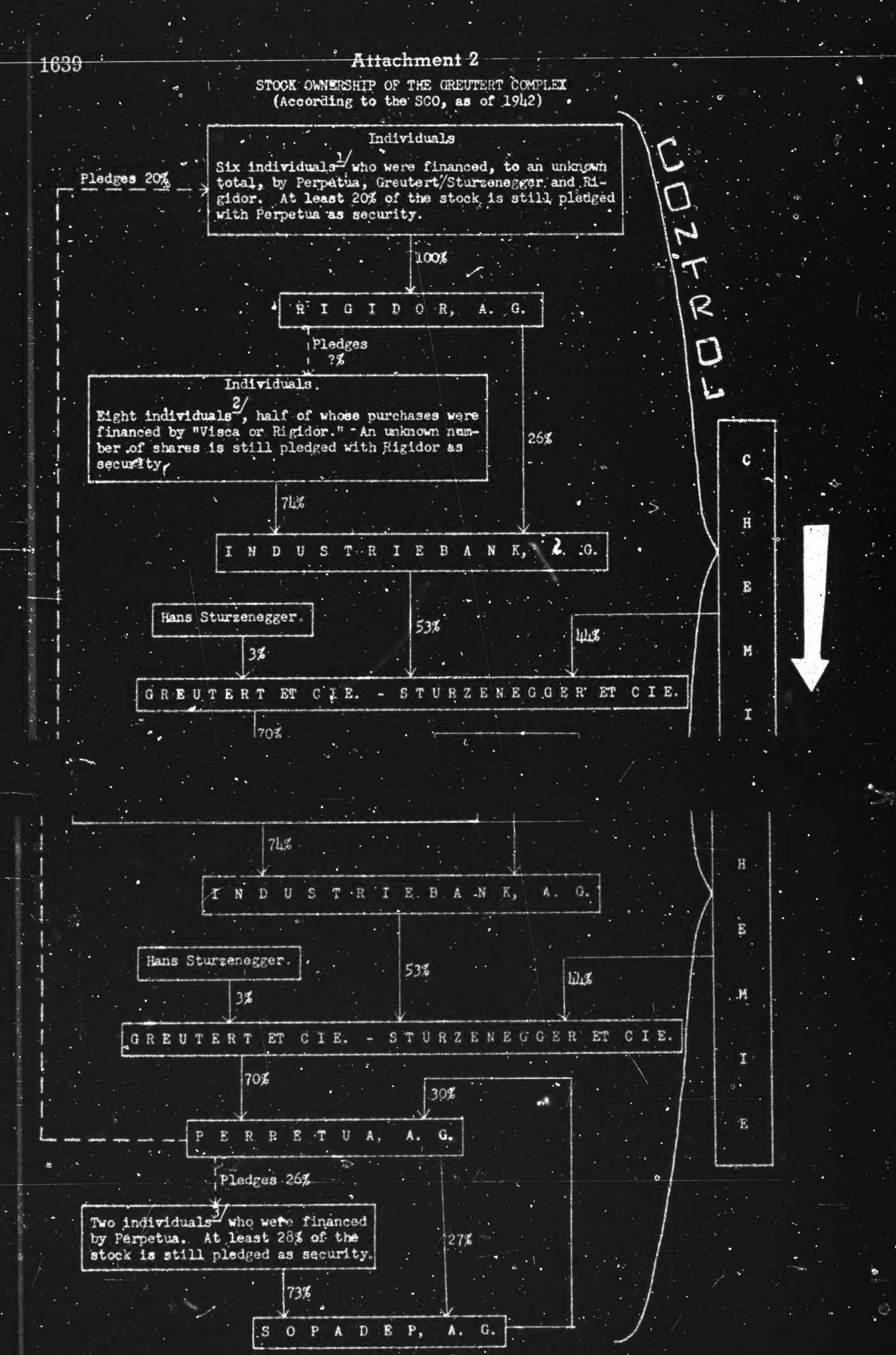
1636 Wilson, Esq., the attorney for the plaintiff in this case. Mr. Wilson stated that it was the then present intention of his client, I. G. Chemie, to make representations to its government, after the client's complaint was filed, with a view towards a change in the position of its government.

1637 /s/ DAVID SCHWARTZ

[Sworn to Nov. 12, 1948]

Attachment 2

STOCK OWNERSHIP OF THE GREUTERT COMPLEX
(According to the SCO, as of 1942)



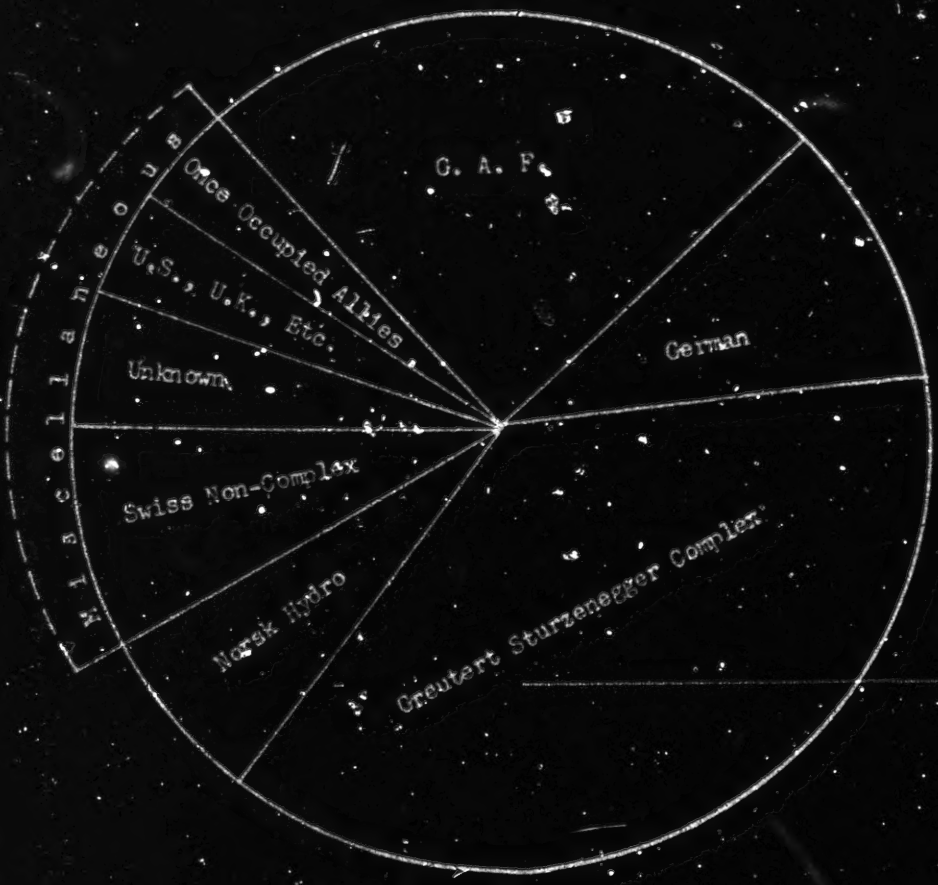
1/ Mollwo, Cassani, Grieshaber, Germann, Haller and Auer.

2/ Wolfensberger, Du Bois, Mollwo, Haller, Sturzenegger, German, Werder and Sutter.

Attachment 3

1640 STOCK DISTRIBUTION (AND VOTING CONTROL) OF I. G. CHEMIE AS OF 1940

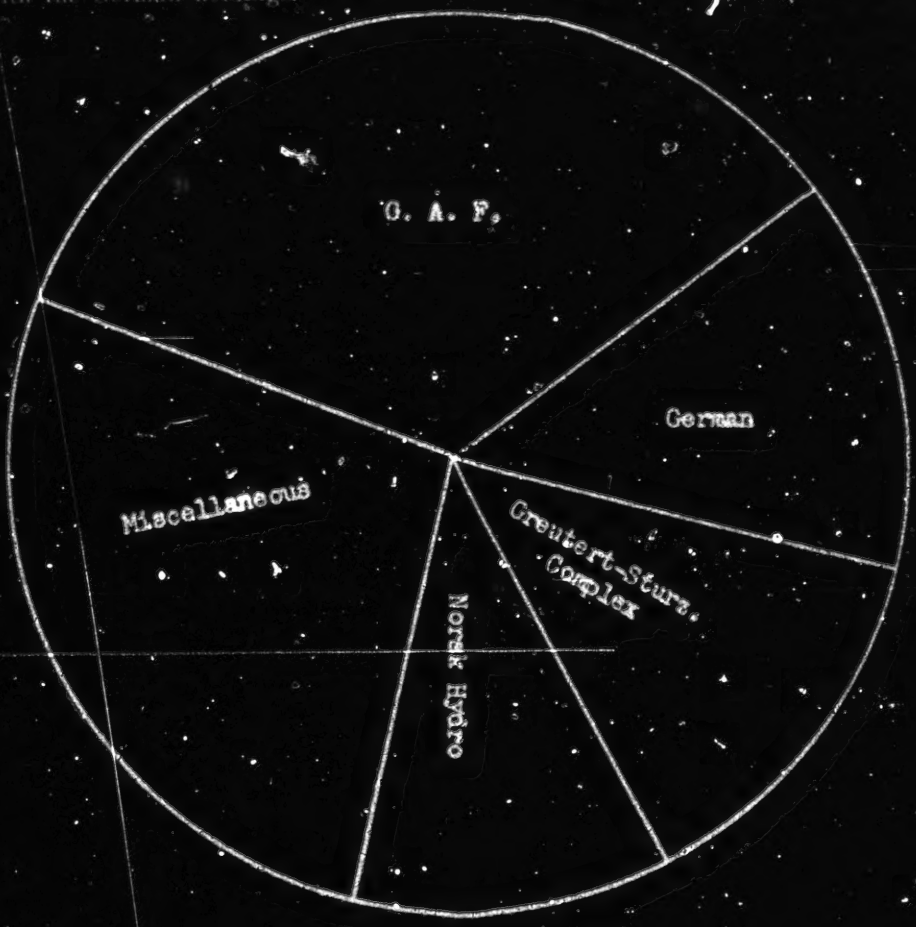
	No. of Shares	% of Total Shares Outstanding
1. G. A. F.	81,900	23.2
2. German Individuals	38,500	10.9
3. Groupe Sturzenegger Complex	136,000	39.0
4. Norsk Hydro	22,750	6.3
5. Miscellaneous		
(Swiss Non-complex, Persons in Occupied Territory, in U. S., U. K., etc., and unknown)	69,100	19.7
	350,000	



1641 PAID IN CAPITAL CONTRIBUTED BY THE STOCKHOLDERS OF CHEMIE AS OF 1940.

	No. of Shares	% of Total Shares Outstanding	Paid in Capital, in Millions Swiss Francs	% of Total Paid in Capital
1. G. A. F.	84,900	24.2	35.30	35.4
2. German Individuals	38,080	10.9	13.2245	13.3
3. Creutert Sturzenegger	130,000	37.0	14	14.1
4. Norsk Hydro	22,100	6.3	10.7025	10.8
5. Misc. (Swiss Non-Complex; persons in Occupied Territory, U.S., U.K., etc. and unknown)	69,000	19.7	26.2730*	26.4
	350,000		99.5	

*Approximate, with respect to 4500 shares, and therefore possibly in error up to 7%. To the extent error exists, it would require adjustment with the German holdings.



~~1042~~

1642

Attachment 4.

[Translation].

[Copy of a telegram.]

JULY 22, 1943

WERNER GABLER
1627 KAY STREET
WASHINGTON

REQUESTED INFORMATION ABOUT DIRECTORS OF OUR CORPORATION IS AS FOLLOWS:

FELIX ISELIN PRESIDENT BASLE, COLONEL IN SWISS ARMY, PRESIDENT OF LA BALOISE COMPAGNIE DE REASSURANCE, PRESIDENT OF THE PUBLISHING HOUSE OF THE BASLER NACHRICHTEN, FURTHER PRESIDENT OF THE SOCIETE ANONYME FIDUCIAIRE SUISSE, AMONG OTHERS HE IS ALSO MEMBER OF THE BOARD OF SWISS BANK CORPORATION.

GOTTFRIED KELLER AARAN, SWITZERLAND, PROMINENT MEMBER OF CONSEIL DES ETATS FORMER COLONEL IN SWISS ARMY, VICE PRESIDENT OF ALUMINUM INDUSTRIES AG, AND MEMBER OF THE BOARD OF VARIOUS OTHER SWISS INDUSTRIAL ENTERPRISES, MEMBER OF THE BOARD OF CREDIT SUISSE.

ALBERT GADOW BASLE, MANAGING DIRECTOR.

AUGUST GERMANN, ZÜRICH, SWITZERLAND, MANAGING DIRECTOR BANQUE POUR ENTERPRISES ELECTRIQUES.

HANS STURZENEGGER BASLE, BANKER UNLIMITED PARTNER AND MANAGER OF THE BANK OF H STURZENEGGER AND CIE STOP.

THERE IS NO EXECUTIVE COMMITTEE. ALL FIVE DIRECTORS PARTICIPATE IN THE CONDUCT OF THE COMPANY BUSINESS AND ARE RESPONSIBLE FOR IT STOP ANY TWO OF THE DIRECTORS ARE ENTITLED SIGNS JOINTLY ON BEHALF OF THE COMPANY.

IGECHEMIE

1643 Attachment 5.

[Copy of an original letter].

WERNER K. GABLER
ECONOMIC CONSULTANT

1627 K Street, N. W.
Washington, D. C.

Telephone
Metropolitan 3330

July 29, 1941

Mr. J. W. Pehle
Assistant to the Secretary of the
Treasury Department
Washington, D. C.

Dear Mr. Pehle:

On May 28, 1941, Dr. Felix Iselin, president of I. G. Chemie, wrote you a letter in regard to the 1,550,000 B shares of General Aniline and Film stock, frozen by the Treasury Department. Included in this letter were the following documents in German language:

Public Deed of the 15th Regular General Meeting of the Internationalen Gesellschaft Fuer Chemische Unternehmungen A.-G. (I. G. Chemie) Basel.

Excerpts from the Annual Report of the I. G. Chemie, 1936-1939.

Extracts from the Minutes of the Board of Directors Meeting of the I. G. Chemie of March 18, 1937, January 10, 1928, April 21, 1938, September 7, 1939, and September 23, 1939.

I have had an opportunity to translate these documents and I am sending you herewith copies of these translations. I tried to keep them as closely as possible to the original German language text.

I recently received a cable from I. G. Chemie describing business affiliations of the present directors. Since I felt that this also may be of interest to you, I am enclosing a copy of it.

Respectfully yours,

[Signed] WERNER K. GABLER.

1644 Attachment 5.

[Translation of original printed document in German]

Internationale Gesellschaft fur Chemische Unternehmungen A. G., Societe Internationale pour Entreprises Chimiques S. A. (I. G. Chemie).

Basel

Basel . . . September 1940.

P. P.

We beg to hand you on the following page the signatur of the gentlemen who are authorized to sign for our co pany. . . .

Very truly yours,

Internationale Gesellschaft f Chemische Unternehmung A.-G. (I. G. Chemie).

[p. 2] *Any two members of the Board of Directors s jointly: . . .*

Dr. Felix Iselin *Chairman* (President)	[Signed] Iselin
Dr. Albert Gadow	[Signed] Gadow
August Germann	[Signed] Germann
Dr. Gottfried Keller	[Signed] Dr. G. Keller
Carl Roesch	[Signed] Roesch
Dr. Hans Sturzenegger	[Signed] H. Sturzenegg

[p. 3] *The following gentlemen sign jointly with a one of the above listed members of the Board of Dir tors: . . .*

Fritz Brumm	[Signed] pp Brumm
Hans Haller	[Signed] pp H. Haller

1645 Attachment 7.

COPY

Copied H. D.
Compared R. C.
Bern,
April 23, 1947

UNCLASSIFIED
No. 15069

Subject: The taking of testimony in Switzerland in connection with suits for restitution of vested property and for other purposes.

The American Minister at Bern has the honor to refer to the Legation's telegram No. 325 of April 18, 1947, advising the Department of the Federal Political Department's negative reply to the Legation's representations in connection with the taking of testimony in Switzerland relating to suits for restitutions of vested property in the United States and for other purposes.

A copy, in translation, of the Political Department's note, dated April 17, on which the Legation's telegram was based is enclosed.

Enclosure

Copy, in translation,
of note from Federal Political Department
dated April 17, 1947
File No. 804.5

EAP:X. R. Meadows:lj

Original and hectograph copies to the Department

1646 COPY

(Enclosure to Despatch No. 15969 dated April 23, 1947 from American Legation, at Bern, Switzerland).

Translation

FEDERAL POLITICAL DEPARTMENT
Division of Foreign Affairs
I.B.65.5.21 Am.-WE/GN

With reference to the Legation's note No. 2583 of November 5, 1946, the Political Department's reply of November 28, 1946, regarding the taking of testimony by American Consulates, the Federal Political Department has the honor to acknowledge receipt of a new note, No. 2697 of March 28, 1947, from the Legation of the United States of America.

After examining with the competent Federal authorities the request contained in the Legation's note of November 5, 1946, the Political Department regrets to inform the Legation that it is not possible to take favorable action on this request.

In effect, the taking of testimony, according to the Swiss conception, is a judicial prerogative of Federal and Cantonal sovereignty to which no exceptions can be made. This prerogative thus remains exclusively within the competence of Swiss tribunals authorized to take depositions as requested through diplomatic channels.

The Political Department wishes to refer to its note of September 4, 1922, to the Legation and that of the Federal Department of Justice and Police of November 25, 1938, in which the Swiss point of view was set forth and which remains unchanged.

The Federal Political Department avails itself of this opportunity to renew to the Legation of the United States of America the assurance of its high consideration.

ERM/lj

COPY.

(Enclosure No. 1 to despatch No. 15448, September 16, 1947, from American Legation, Bern, Switzerland).

RESTRICTED

TRANSLATION

DEPARTMENT POLITIQUE FEDERAL
B.65.5.21.Am.—RE.
ad No. 2834.

By notes of August 29, 1947, the Legation of the United States of America returned to the question of the taking of testimony by American Consulates in Switzerland and proposed to engage in direct negotiations on this subject.

The Federal Political Department has the honor to inform the Legation that the federal authorities, after having once more carefully examined the problem, find themselves obliged to maintain the point of view which they have already set forth on several occasions. In effect, the taking of testimony, according to the Swiss conception, constitutes an act of sovereignty reserved exclusively to the courts. The latter proceed in such matters on the basis of letters rogatory addressed through diplomatic channels.

Moreover, the Swiss authorities, in giving to American Consulates in Switzerland the right to proceed with interrogations, would create a regrettable precedent of which other countries would not fail to avail themselves also.

In these circumstances, the Department believes that the conversations envisaged by the American authorities would have little chance of success. It seems then that it would be useless to have an American expert come especially for this purpose.

The Department hopes that the American authorities will be willing to show a comprehending attitude with respect to the position of the Swiss authorities in this matter and it takes this occasion to renew to the Legation of the

United States of America the assurance of its high consideration.

RESTRICTED

1650 Filed December 2, 1948. Harry M. Hull, Clerk.

Supplemental Affidavit of David Schwartz in Opposition to Motion That Depositions Shall Not Be Taken, or That They Shall Be Taken in Switzerland, etc.

DISTRICT OF COLUMBIA; ss

David Schwartz, being duly sworn, deposes and says:

I am an attorney employed in the Litigation Branch, Office of Alien Property, Department of Justice, and I am directly responsible for the conduct of this case on behalf of the defendants. I have submitted an affidavit in opposition to this motion, sworn to November 12, 1948.

This affidavit is submitted to bring to the attention of the Court changes in the facts relevant to the decision of this motion occurring since the filing of the defendants' Points and Authorities and supporting affidavits, and to present certain documents relevant to the plaintiff's supplemental papers.

The alternative motion by the plaintiff is that the deposition of the plaintiff by its three officers shall be taken in Switzerland and not in Washington. In my prior affidavit I attached communications from the Swiss Government to the Department of State in which the Swiss Government stated that it is illegal under the Swiss constitution to take depositions in Switzerland.

We have since been informed that the Swiss Government has waived its laws for this case only, and is willing that the deposition be taken

1651 in Switzerland. Attachment 1 hereto is a letter to the Office of Alien Property from the Department

of State with an enclosure, the written confirmation from the Swiss Legation.

1658 Dated December 1, 1948.

/s/ David Schwartz.

[Sworn to December 2, 1948.]

1659 Attachment 1.

Address Official Communications To
The Secretary of State
Washington 25, D. C.

(Seal) DEPARTMENT OF STATE
WASHINGTON

In reply refer to
L/E December 1, 1948.

The Honorable
David L. Bazelon,
Assistant Attorney General,
Director, Office of Alien Property,
Department of Justice.

My dear Mr. Bazelon:

The Department of State is in receipt of a copy of a letter of November 29, 1948 addressed to you, from the Legation of Switzerland concerning the suit of Societe Internationale pour Participations Industrielles et Commerciales S. A. (Interhandel), formerly known as I. G. Chemie, Basle, against the Attorney General. For your convenience a copy of this letter is enclosed herewith.

In a note to the American Legation at Bern on April 17, 1947 the Swiss Government, in rejecting the Legation's representations in connection with the taking of testimony in Switzerland relating to suits for restitution of vested property in the United States and for other purposes, stated:

1659

"After examining with the competent Federal authorities the request contained in the Legation's note of November 5, 1946, the Political Department regrets to inform the Legation that it is not possible to take favorable action on this request.

"In effect, the taking of testimony, according to the Swiss conception, is a judicial prerogative of Federal and Cantonal sovereignty to which no exceptions can be made. This prerogative thus remains exclusively within the competence of Swiss tribunals authorized to take depositions as requested through diplomatic channels.

"The Political Department wishes to refer to its note of September 4, 1922, to the Legation and that of the Federal Department of Justice and Police of November 25, 1938, in which the Swiss points of view was set forth and which remains unchanged."

1660 Again, the Swiss Government in a note to the American Legation in Bern on or about September 16, 1947, in reply to a further note concerning the same subject, stated as follows:

"The Federal Political Department has the honor to inform the Legation that the federal authorities, after having once more carefully examined the problem, find themselves obliged to maintain the point of view which they have already set forth on several occasions. In effect, the taking of testimony, according to the Swiss conception, constitutes an act of sovereignty reserved exclusively to the courts. The latter proceed in such matters on the basis of letters rogatory addressed through diplomatic channels.

"Moreover, the Swiss authorities, in giving to American Consulates in Switzerland the right to proceed with interrogations, would create a regrettable precedent of which other countries would not fail to avail themselves also.

"In these circumstances the Department believes that the conversations envisaged by the American authorities would have little chance of success. It seems

then that it would be useless to have an American expert come especially for this purpose.

"The Department hopes that the American authorities will be willing to show a comprehending attitude with respect to the position of the Swiss authorities in this matter, and it takes this occasion to renew to the Legation of the United States of America the assurance of its high consideration."

In its letter of November 29, 1948, however, the Swiss Legation states that the Swiss Government is willing as an exception to permit depositions to be taken in Switzerland in the Interhandel case. As is seen, this represents a change in position on the part of the Swiss Government from the position which it has maintained since 1922 and which it twice reiterated in 1947 in response to this Government's inquiries. Since the Department had been advised by the Swiss Government that the taking of testimony was a judicial prerogative relating to the sovereignty of Switzerland to which no exceptions could be made, and since the subject letter, by making an exception, indicates that perhaps this is not a question relating to sovereignty and judicial prerogatives, but rather is a matter as to which the Swiss Government has discretionary authority, this Department intends in the near future to renew its request to the Swiss Government that the taking of testimony be permitted in Switzerland in matters relating to suits for restitutions of vested property in the United States and for other purposes. It is hoped that there will then evolve a regular procedure, and depositions will not be granted or denied on the basis of an interest in the outcome of litigation.

1661 Under these circumstances, and pending the results of those further representations to the Swiss Government which this Department intends to make, it is the view of this Department that departments and agencies of this Government should refrain from availing themselves of the Swiss Government's willingness to have depositions taken in Switzerland in a single case. To do other-

1661

wise would place the decision of whether depositions can be taken on an arbitrary basis, and would be discriminatory against those to whom the privilege is not granted. Such a result would be likely to embarrass this Department in its conduct of the foreign relations of the United States.

You may inform appropriate judicial tribunals of the contents of this letter.

Sincerely yours,

For the Secretary of State:
Signed: JACK B. TATE,
JACK B. TATE,
Acting Legal Adviser.

Enclosure:
From Swiss Legation,
November 29, 1948.

1662 C O P Y

LEGATION OF SWITZERLAND
WASHINGTON, D. C.

November 29, 1948.

Mr. David L. Bazelon,
Assistant Attorney General
Director, Office of Alien Property
Department of Justice
Washington, D. C.

Dear Mr. Bazelon:

Reference is made to the conversation of November 24, 1948, which Mr. Mason, Mr. David Schwartz and three other members of your office had with Mr. de Rham of this Legation with respect to the case of Societe Internationale pour Participations Industrielles et Commerciales S. A. (Interhandel), formerly known as I. G. Chemie, Basle.

I wish to confirm to you that the Swiss Government is willing, as an exception, that for this case depositions be taken in Switzerland and documents examined there, in

accordance with the American law. I should like to point out that persons called upon to testify will be free to answer the questions put to them and will not in so doing violate any Swiss law.

It is the intention of the Federal Political Department to delegate a representative to attend the hearings with merely the functions of an observer. There would be no objection on the part of the same authorities to the presence also of a representative of the American Legation in Berne.

Very truly yours,

For the Minister of Switzerland:
/signed/ Eric Kessler,
Counselor of Legation.

1683 Filed December 2, 1948. Harry M. Hull, Clerk.

Affidavit in Support of Motion of Plaintiff That Depositions Shall Not Be Taken, or That They Shall Be Taken in Basle, Switzerland, and That the Court Shall Fix the Time for the Taking Thereof.

Confederation of Switzerland,)
Canton of Basle,) to-wit:
Consulate of United States,)

I, Walter Germann, being first duly sworn, on oath depose and state that I am an adult citizen of the Confederation of Switzerland, now residing in Basle, Switzerland; that I am a member of the Board of plaintiff, having been elected such on November 22, 1948; that I am also manager of the plaintiff corporation, having assumed such position pursuant to Resolution of the Board of Directors of March 16, 1945, and that I have acted in such capacity since then; that said Resolution is in the following language:

"3. Der Verwaltungsrat beschliesst die Schaffung einer eigentlichen Direktion, der die laufende

ing two signatures appended upon each occasion when the corporate name is used, the directors of the plaintiff who are authorized to sign do so most always by way of second or countersignature to that of this affiant or the president or an employee authorized to sign; and affiant says that the authorized signatories who are merely members of the Board of Directors do not, as the result of such designation, function differently from those members of the Board who are not authorized to sign except in the appending of a countersignature to a document; that none of these three individuals has an office in the offices of the said corporation at the address mentioned above; that the said Felix Iselin is a practicing lawyer in Basle, Switzerland, and lives and has his law office in said City; that he occupies no office location in his capacity as a member of the Board nor as Chairman or President of the Board of Directors of the plaintiff corporation; that the said

Hans

1686 Sturzenegger maintains a banking office in Basle, Switzerland and lives on the outskirts of the City of Basle; that he has no office location there or elsewhere in relation to his membership upon the Board of Directors of the plaintiff corporation; that the said August Germann resides in Zurich, Switzerland and is retired from his former business activity with the Elektro-Bank at Zurich (now known as Elektro-Watt), and that he maintains no office at any location for any purpose whatsoever, that despite the absence of officers in the American sense, when there is a direction or management such as has been created in the instance of plaintiff, the Board of Directors of a Swiss corporation, and particularly of the plaintiff, functions substantially the same as the board of an American corporation; that in the opinion of this affiant it is immaterial whether the Board be called the administrative or the business conducting body and whether it represents the company judicially and extrajudicially or in and out of court; that in the instance of plaintiff, the management was

elected by the Board under the provisions of Section twenty-six of the articles, just as officers of an American corporation are usually selected by the Board; that the Board is the governing body in both countries, the day to day management being entrusted to officers or managers; and the Board of plaintiff does participate in the conduct of the company business and is responsible for it in substantially the same sense as the Board of an American corporation.

/s/ WALTER GEERMANN.

[Sworn to November 24, 1948.]

1702 Filed December 24, 1948. Harry M. Hull, Clerk.

Memorandum Denying Plaintiff's Motion That Depositions Shall Not Be Taken, or That They Shall Be Taken in Basle, Switzerland.

In this suit, which arises under the Trading with the Enemy Act of 1917, as amended (U. S. C. A. Title 50, Appendix; section 1-38), defendant served counsel for plaintiff with notice that they desired to examine before a notary public in the District of Columbia, plaintiff corporation through Hans Sturzenegger, Felix Iselin and August Germann, described as officers or managing agents of the plaintiff corporation. Plaintiff has moved that depositions shall not be taken, or in the alternative, that they be required to be taken in Switzerland. At the oral hearing, the Court announced that plaintiff's motions would be overruled as to Felix Iselin, but as to Hans Sturzenegger and August Germann decision was reserved. The question as to the latter individuals is whether they are officers or managing agents of plaintiff, within the meaning of Section 37d of the Federal Rules of Civil Procedure which provides as follows:

"If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is

to take his deposition, after being served with a proper notice, * * *, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party."

1703 Plaintiff argues that since these individuals are directors, and not officers or managing agents, they are not required to appear in response to the notice served. It may be true that ordinarily a director of a corporation organized under the laws of the United States or of a State of the United States is not included in the language of the Rule. From the record in this case, however, it appears that plaintiff's Articles of Incorporation provide that the directors will constitute the administrative body of the corporation and that they will be charged with conducting its business. They also charge the directors with other responsibilities not usually imposed upon directors of American corporations. The duties of the directors in plaintiff corporation appear to be comparable to those of officers and managing agents of American corporations and in my opinion such directors should be regarded as being included within the provisions of Rule 37d.

It is agreed that plaintiff's alternative motion is to be determined in the sound discretion of the Court. Upon the record before me, it seems advisable that depositions taken by defendant should be permitted to be taken in the District of Columbia where the suit is to be tried, but at the expense of the United States within usual Government limitations.

The Court has been informed counsel will agree upon the dates for taking the depositions and that no action is

required on that part of plaintiff's motion which calls upon the Court to determine the dates of the hearings.

Bolitha J. Laws,
Chief Justice.

December 21, 1948.

1704 Filed January 5, 1949. Harry M. Hull, Clerk.

Order.

Upon consideration of the motion of the plaintiff that depositions of the plaintiff-corporation through Hans Sturzenegger, Felix Isolin and August Gegnaum shall not be taken, or, in the alternative, that they shall be taken in Basle, Switzerland, and that the Court shall fix the time for the taking thereof, and after hearing the parties and upon consideration of all the papers submitted herein,

It is hereby Ordered that the motion that depositions shall not be taken, or, in the alternative, that they shall be taken in Basle, Switzerland, is denied.

It is further Ordered that the depositions to be taken by the defendants in the District of Columbia shall be at the expense of the defendants, pursuant to applicable government regulations.

It appearing that no action is required at this time on that part of the plaintiff's motion which calls upon the Court to determine the dates of the hearings,

It is further Ordered that in the event of disagreement as to the dates of the hearings, the parties may without motion and on reasonable notice apply to the Court for a further order fixing the time for the taking of the depositions.

Bolitha J. Laws,
Chief Justice.

January 5, 1949.

1705 Filed January 8, 1949. Harry M. Hull, Clerk.

Motion Under FRCP #34 for Discovery and Production of Documents in Possession of Defendant, Honorable Tom C. Clark, Attorney General, etc.

Comes now the plaintiff, by its undersigned attorneys, and moves the Court under F. R. C. P. #34 to order the defendant Clark to produce and permit the inspection, copying and photographing, by or on behalf of the plaintiff, of some 23,000 documents which constitute or contain evidence relevant to the subject matter involved in the pending action and relating to matters within the scope of the examination permitted by Rule 26(b), which documents are in the possession, custody and control of the defendant, Clark.

In order to show good cause for this motion and to designate the documents referred to, plaintiff calls the attention of the Court to pages 2 and 3 of a certain affidavit of David Schwartz, Esq., Chief Trial Attorney in the Office of Alien Property, and of counsel for the defendants herein, entitled "Supplemental Affidavit of David Schwartz in Opposition to Motion that Depositions shall not be taken, or that they shall be taken in Switzerland,

1706 Etc." executed on December 2, 1948 and heretofore filed in this proceeding. The portion of Mr. Schwartz' affidavit to which plaintiff refers is as follows:

> "Aside from the files of other agencies in Washington which have investigated I. G. Farben and its relations with the plaintiff I. G. Chemie, there have been assembled in this office some 23,000 documents which are deemed to have bearing on the case. These documents occupy 27 four drawer file cabinets. An index-digest of these documents, in the process of preparation, now numbers 58,000 8 x 5 cards. These index-digest cards represent an intensive analysis of some 6,200 documents, and occupy 28 file drawers."

Said documents are not privileged.

[signed by counsel for plaintiff]

1709 Filed January 1-, 1949. Harry M. Hull, Clerk.

Motion for the Designation of a Judge to Hear and Superintend All Matters in This Case Preliminary to Trial and, Under F. R. C. P. No. 34, for the Production of Documents.

Come now the defendants by their undersigned attorneys and move the Court as follows:

1. For an order designating a judge of this Court to hear, determine and superintend all matters in this case preliminary to trial.

2. For an order referring to the said judge for decision the pending motion by the plaintiff for the production of the defendants' documents, and the motion of defendants, hereinafter made, for the production of the plaintiff's documents.

3. For an order, pursuant to Rule 34, Federal Rules of Civil Procedure, directing the plaintiff to produce, for inspection, copying and photographing by the defendants, all documents, not privileged, in its possession, custody or control relating to any of the matters within the scope of the examination permitted by Federal Rule 26(b), including documents of subsidiaries of the plaintiff, Osmon A. G., and Surzenegger & Cie.

4. For an order, in the event plaintiff's pending motion for the production of defendants' documents is granted, that the production of documents by the parties be a reciprocal exchange under the supervision and direction of the specially designated judge.

In order to show good cause for the issuance of the orders prayed, and to show that the documents of the plaintiff are sufficiently designated and

1710 contain evidence relating to the matters within the scope of the examination permitted by Federal Rule 26(b), the defendants refer to the accompanying affidavit of David Schwartz, to the accompanying memorandum, and to the plaintiff's motion, now pending, for production, in-

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spection and copying of some 23,000 documents in the possession of the defendants.

5. For such other relief as may be just and proper in the premises.

Dated January 18, 1949.

Respectfully submitted,

[signed by counsel for defendants]

1711 Filed January 18, 1949. Harry M. Hull, Clerk.

Affidavit in Support of Defendant's Motion Under Federal Rule 34 for the Production of Documents.

DISTRICT OF COLUMBIA, ss:

DAVID SCHWARTZ, being duly sworn, deposes and says:

I am an attorney employed in the Office of Alien Property, Department of Justice. I am directly responsible for the conduct of this case on behalf of the defendants, and I am familiar with the case and the proceedings had therein.

This affidavit will state the facts showing that not less than all the documents of the plaintiff and its subsidiaries relate to the issues in this case and to the matters within the scope of examination under Rule 26(b), and should, therefore, be produced

1712 under Rule 34 for inspection and copying by the defendants. In support of this contention it will be shown below that the points of contact between the plaintiff and I. G. Farben and other enemies are so numerous, intricate and of such long standing that all of the plaintiff's documents are relevant to the issue of enemy status. I aver, moreover, that from my preparation of the case I know of no segment of the plaintiff's business which is not relevant either to plaintiff's connections with I. G. Farben or with other enemies.

There are attached as exhibits A, B and C, translations of three reports by the Swiss government, made in 1947 as the result of an investigation of plaintiff's German connections. Even a cursory glance at these reports shows that

each and every document in the plaintiff's files is relevant to the issue of its enemy status. I will summarize the high lights of these three reports and add only a few facts otherwise available.

A preliminary word about these Swiss government reports. They conclude that, for the purposes of Swiss law on the blocking of German firms, the plaintiff is not German. The plaintiff has therefore described these reports, together with another Swiss report not attached, as a "clean bill of health." The facts admitted by the Swiss reports, however, so incriminate the plaintiff that it is clear that Swiss standards of German connection must be infinitely more tolerant than the standards of the Trading with the Enemy Act.

Perhaps the best evidence of the breadth of the documents bearing on plaintiff's German connections is the scope of the investigation conducted by the Swiss government. The Swiss Compensation Office investigated the plaintiff and H. Sturzenegger et Cie. for a month in June-July, 1945, and again for four months

1713 between November 1945 and February 1946. Six investigators participated. Although the report of the investigators does not state explicitly that they examined every document, they (Ex. B, p. 1 [R. 1761]):

> examined all the rooms on the premises of I. G. Chemie [the plaintiff], [and] of Sturzenegger & Company in Basel. . . . In the search of documents which might help the investigation at this time, the following documents were examined:

	I. G. Chemie	Sturzenegger & Co.	Affiliated Companies & Persons (Other investigations)
Dosiers about	250	450	70
Containing files about	23,000	55,500	2,000
Account books	30	110	25

The investigators selected, and submitted to their superiors, the originals of 2500 documents, regarded as "the most essential." *(ibid.)*

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Osnoin A. G., a one-hundred percent subsidiary of the plaintiff (Ex. C, p. 12 [R. 1799], appears on a list of sixty-eight "Firms Inspected in Connection with I. G. Chemie, Basel/H. Sturzenegger & Co., Basel." (Ex. B, p. 23 [R. 1783])

The coupling of the Sturzenegger firm with plaintiff was necessary for several reasons. The Sturzenegger firm is described as "a banking house very close to I. G. Chemie" (Ex. B, p. 17 [R. 1777]). It is much more than that. The relations between the plaintiff and the Sturzenegger-Greutert firm illustrate a problem frequent in the case. It is difficult to determine which entity owns the other. On the one hand, the Sturzenegger firm occupies the central position in a circularly owned chain of Swiss corporations which control the plaintiff and own about thirty-five per cent of its stock. (The details of this ownership and control are distributed throughout

1714 Exhibits A, B, and C and were summarized in my affidavit of November 12, 1948, on file herein.) On the other hand, the plaintiff is now a partner in the Sturzenegger firm, and owns eighteen percent of its capital. As of December, 1943, the plaintiff's partnership interest in Sturzenegger was over forty percent. (Ex. C, p. 8 [R. 1795]).

The Sturzenegger firm can also be simply regarded as a branch office of the plaintiff—as the plaintiff's executive arm and financial office. For instance, almost all of plaintiff's securities are deposited with Sturzenegger (Ex. B, p. 25 [R. 1785]). And according to plaintiff's administrative claim, filed with the Department of Justice and not attached hereto, substantially all of the stock in General Aniline & Film Corporation claimed by the plaintiff in this suit has over the years been owned by or under option to the Sturzenegger firm. The Sturzenegger-Greutert firm has acted as intermediary in almost every one of the many transfers of this stock since its issuance.

Admittedly, the Sturzenegger firm was in its early days German owned and maintained by Farben's business (Ex.

C, p. 7 [R. 1794]). It had on its books large accounts labelled consortia and secretariats. One of these, the I. G. Consortium, contained assets belonging to the "I. G. Farben group" (Ex. C, p. 27 [R. 1814]). Plaintiff is the successor to assets of this I. G. Consortium:

> The I. G. Consortium may perhaps best be termed the precursor of the idea of establishing I. G. Chemie in that securities and participations and particularly transactions that later were turned over to the I. G. Chemie, or which came within its sphere of activity, were handled through this consortium. (Ex. C, p. 27 [R. 1814].)

After its incorporation plaintiff kept a large proportion of its assets in similar accounts with the Sturzenegger firm. This

1715 was done for purposes of business secrecy and of "taxation and financial policy." At its convenience plaintiff transferred its assets back and forth between itself and these secretariat accounts (Ex. C, pp. 26-28 [R. 1813-1815]). "For the I. G. Chemie the assets on the secretariat accounts constituted an actual reservoir from which funds were conveyed to the I. G. Chemie in order to adjust losses when necessary; or else special profits were carried on these secretariat accounts in order not to have such profits appear outwardly." (Ex. C, pp. 27-28 [R. 1814-1815]). Plainly, the examination of plaintiff's documents and not Sturzenegger's would touch only a fraction of plaintiff's business operations.

With respect to points of contact between the plaintiff and I. G. Farben, the Swiss reports state that the plaintiff was "brought into being by I. G. Farben"; that it "was founded by I. G. Farbenindustrie for the purpose of administering the latter's foreign participations' and that the foundation was "at the suggestion and according to a plan of Dr. Hermann Schmitz, member of the Board of Directors of I. G. Farben, through Greutert & Co. [now known as Sturzenegger & Co.], Bankers of Basel, on behalf of I. G.

1715

Farben." (Ex. A, p. 9 [R. 1731], Ex. B, p. 17 [R. 1777], Ex. A, p. 8 [R. 1730]).

Schmitz was the financial genius of Farben and became its president. He was the first president of the plaintiff and remained president until the formal end of plaintiff's connection with Farben in 1940. Of Schmitz, the Swiss report states that he was "the controlling personality in I. G. Chemie whose hand held the reins" (Ex. A, p. 13 [R. 1735]).

The formal public relations between plaintiff and Farben were based on a contract signed by the two in 1929, shortly after plaintiff's incorporation. By that contract Farben had a perpetual option on plaintiff's assets at their book value and in return Farben guaranteed a dividend on plaintiff's stock

1716 equal to the dividends on Farben's stock. (Ex. A, pp. 10-11 [R. 1732-1733]) "From the economic point of view, I. G. Chemie was controlled by this agreement." (Ex. A, p. 11 [R. 1733]). The primary asset covered by the agreement was, of course, the stock in General Aniline & Film Corp., the vested property which is the subject of the lawsuit.

The agreement between plaintiff and Farben was cancelled in June, 1940, and the plaintiff's position, repeatedly stated since then, is that the cancellation was bona fide and marked the end of plaintiff's relations with Farben. Nevertheless, on December 19, 1941, Farben wrote to the German government as follows (Ex. D, p. 3) [R. 14711]:

> In spite of cancellation of all formal legal relations between I. G. Chemie and us, I. G. Chemie—as you know from our various applications—is of great importance to us, being administrator of very considerable American interests of our company, lying in General Aniline and Film Corporation, New York.

In this letter Farben sought necessary government approvals for plaintiff's subscription to stock in Norsk-Hydro, a nitrogen plant in German-occupied Norway. The

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Swiss effort to explain away this letter appears at Exhibit C, page 40 [R. 1827].

The plaintiff's annual reports, issued over the years, have revealed that it has owned interests only in General Aniline & Film, Norsk-Hydro, and Durand and Huguenin, a Swiss dyestuff firm. Detailed proof exists showing that these corporations were all within Farben's sphere of business interests, but a description of such proof would expand this affidavit to unreasonable proportions. It is enough to point out that these securities were taken over at the outset of plaintiff's corporate life, shortly after plaintiff had been created by Farben and became

1717 the owner of assets formerly owned by the I. G. Consortium, mentioned above as the syndicate containing Farben assets.

As noted above, the plaintiff did not itself hold all its assets; it certainly did not reveal them in its annual reports. The Swiss reports have revealed that among the assets not hitherto revealed are still others which demonstrate the intimacy between plaintiff and Farben and Germany. For instance, plaintiff and the Sturzenegger-Greutert firm together still own a majority of the stock of Deutsche Laenderbank, a bank in Berlin. (Ex. C, p. 46 [R. 1833]). As long ago as 1926, this bank was described by Mr. Greutert as the "Housebank" of Farben. (Deposition of Rudolph Euler, taken in anticipation of this case and filed with this Court, Civil Action No. 2761-48, Exhibit 14-421 [R. 13500-504])

A few additional selections from the Swiss reports are particularly relevant to show plaintiff's intimate and pervasive relations with Farben during the war years:

Plaintiff's subsidiary, Osmon, until 1944 owned a corporation known as Parta which was a "trustee", *i.e.*, a cloak, for Farben's French business. (Ex. C, p. 36 [R. 1823], Ex. A, p. 31 [R. 1753], Ex. B, p. 15 [R. 1775]). It is unqualifiedly stated in one of the reports that "I. G. Farbenindustrie . . . in 1943 gave Parta . . . directions con-

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cerning the management of its business." (Ex. B, p. 15 [R. 1775]).

Plaintiff continued to participate, long after the alleged separation from Farben, in a Dutch company which had been organized to act as a trustee for the purpose of cloaking Farben sales companies. Throughout the war, payments were apparently made by Farben on a dividend guaranty in favor of the plaintiff and its associates in their capacity as stockholders in the Dutch cloak. (Ex. C, pp. 40-42 [R. 1827-1829]).

1718 In 1935 plaintiff purchased from Farben fifty percent of the stock of a Polish dyestuff plant for 584,000 Swiss francs. By 1942, plaintiff had written this stock down to one franc. Nevertheless in 1943 plaintiff sold the stock for 800,000 francs to a bank which "in all probability" acted for Farben's account. (Ex. C, pp. 46-47 [R. 1833-1834]).

Most suggestive, too, is that throughout the war such persons as the managing director of the plaintiff, and Hans Sturzenegger, a director and the controlling stockholder, continued to act as personal cloaks for Farben's interests in assorted corporations in Greece, England and elsewhere (Ex. C, pp. 43-45 [R. 1830-1832]).

All these facts, we believe, demonstrate that every act of the plaintiff throughout its history, every transaction carried out by or on its behalf, may be directly relevant to the issue of the plaintiff's Farben and German connections. It follows that every document is appropriate for production under Rule 34.

/s/ DAVID SCHWARTZ.

[Sworn to Jan. 18, 1949.]

1723 **Exhibit A4 Report of the Swiss Compensation Office.**

[Translated from typewritten document in German]

1.

SWISS COMPENSATION OFFICE DEPARTMENT FOR THE LIQUIDATION OF GERMAN ASSETS

APPEAL

of the Internationale Industrie- und Handelsbeteiligungen A. G., Basle; hereafter referred to as I. G. CHEMIE, represented by Dr. E. Wehrli, lawyer, Zurich

AGAINST

the decision made by the Swiss Compensation Office on 30th October 1945, regarding blocking.

The facts of the case.

The I. G. Chemie, whose original connections with the German I. G. Farben concern were generally known, was requested by the Swiss Compensation Office, on the basis of the Federal Council Decree of 16th February, 1945, to give information about their capital with regard to German participation. The I. G. Chemie pointed out that only a small percentage of the capital was in German hands, so that they would not fall under the Federal Decree of 16th February 1945. In view of the obscure circumstances, the Swiss Compensation Office decided to make an investigation but for the time being refrained from a provisional blocking on the condition that the President of the Administrative Board gave his word of honour that the company would not transact anything or take any steps which would conflict with the Federal Decree of 16th February, 1945.

1724 This first investigation, which took place 11th June-7th July, 1945, indicated that the I. G. Chemie

finally severed their connection with I. G. Farben in 1940. No files or evidence could be found to show that a close connection still existed or that since the severance of the connection there had been continued close correspondence.

On the other hand, the Allies, that is to say, the Americans, because the principal asset of the I. G. Chemie is their participation in the General Aniline & Film Corporation in the United States of America (hereinafter referred to as GAF) which is administered by the Alien Property Custodian, repeatedly maintained to the Swiss authorities that the connection with I. G. Farben was still maintained and that the American investigation authorities in Frankfurt had found supporting documents.

The American Legation in Berne, through Mr. D. J. Reagan, asked the Federal Political Department in July, 1945 whether the I. G. Chemie or its assets were blocked. In a letter of 27th July, 1945 the Federal Political Dept. referred to the question and suggested a provisional placing of the case under Art. 9, par. 3 of the Federal Decree. As the inquiries made revealed no evidence to prove a connection of I. G. Chemie with I. G. Farben after the already established severance, the S. C. O. could not see its way to put this into effect, especially in view of the declaration given by Dr. Iselin, the President of the Administrative Board.

1725 As the Americans insisted that the connection with I. G. Farben was still in existence and that proof had been found in Frankfurt (on 25th October, 1945, for instance, Mr. Ostrow of the American Consulate General in Zurich called at the S. C. O. and declared, among other things, that all responsible persons of I. G. Farben were behind lock and key and would be interrogated further, that the American experts who examined the I. G. Farben concerns in America a few years ago now had the requisite documentary evidence in their hands), the Fed. Dept. of Public Economy in conjunction with the Federal Political Department gave direct instructions to the S. C. O. to block I. G. Chemie. Notice of the blocking was given by tele-

gram on 30th October, 1945, and this was confirmed the same day by letter. The blocking was intended to be for a period of three months, i.e., till the end of January, 1946, within which time the Allies should submit, as per request of the Federal Political Department, their documentary evidence.

On 15th November, 1945, the decision was complemented by our stating that the blocking was a provisional one in the sense of Art. 9, par. 1, of the Fed. Decree of 16th February, 1945, as per the version of 27th April, 1945. The period within which an appeal could be made commenced on the date of the receipt of this letter.

On 28th November, 1945, Dr. Wehrli put in a complaint against the S. C. O. to the Committee. On 7th December, 1945, the same lawyer appealed against the blocking decree issued by the S. C. O., the written

1726 plea being declared an integral part of the appeal. The various points in the plea and the appeal will be dealt with in the expose of the S. C. O.

On 29th November, 1945, two American officers from Frankfurt accompanied by Messrs. Altaffer and Ostrow of the American Conuslate General in Zurich, came to the S. C. O. to inquire about the results of the investigation into I. G. Chemie, admitting at the same time that they were unable to give the S. C. O. any information.

In January 1946, Mr. Malige, Commercial Attache at the American Legation, declared that the documents showing that even after the separation of I. G. Chemie from I. G. Farben the connection between the two firms was still maintained, could not be handed over before 31st January 1946. One reason given for this was the disagreement between the GAF and the American authorities. When making this statement, the wish was expressed that the blocking should be maintained after 31st January 1946.

As the severance of I. G. Chemie from I. G. Farben was surprising from the economic point of view and as several points, especially the position and significance of the German board member Gadow was not cleared up: further, as

the S. C. O. in another connection, had to ascertain that the I. G. Farben sought to continue to exercise their influence on foreign concerns by special agreements, the S. C. O. decided in the meanwhile to make another supplementary investigation. This took place from 5th November 1945 to 25th February 1946.

1727 The results of this investigation and of the previous one are set out in the investigators' report (Revisionsbericht).

Although both the Federal Political Dept. and the S. C. O. had taken every opportunity of re-iterating their request to the Allies, i.e. the American investigators, for the production of the promised documents, purporting to show that in spite of the reorganization of 1939-40 the connection between I. G. Chemie and I. G. Farben still existed—because the S. C. O. had been unable to trace such a connection—no documents have been produced up till now. On the contrary, the S. C. O. was forced to the conclusion (judging from the statements made by a delegation of American investigators led by the "Chief of the Alien Property Section, Department of Justice, Harry LeRoy Jones", which negotiated with the S. C. O. in summer of 1946), that the Americans, in spite of close investigation and examination of I. G. Farben documents founds in Germany, in spite of their questioning of the responsible people in the German concern and in spite of the examination of the files of the GAF in America, had no documents to produce. The S. C. O. was never informed of the statements made by the responsible German officials of I. G. Farben, particularly of Dr. Schmitz, with regard to the separation of the two firms. The delegation had also asked, among other things, if circumstantial evidence would be possible, and this was replied to in the affirmative by the Swiss with the qualification that the circumstantial evidence produced must be weighty and conclusive, and not something torn out of its context.

1728 The S. C. O. could not get rid of the impression gained from the statements made by the delegation

that the Americans were less interested in clearing up the actual and legal position than in obtaining evidence against the I. G. Chemie to be used in the case which the I. G. Chemie was to take up against the American Government for the release of American assets and compensation for the damaging, and in the opinion of the I. G. Chemie illegal, action taken by the Alien Property Custodian in relation to the assets of the GAF. The Alien Property Custodian had, for example, distributed I. G. Chemie shares found in the portfolio of the GAF as dividends among American shareholders of the GAF. He is also stated to have sold large parcels of valuable securities, such as Standard Oil, at extremely low prices to interested Americans.

As has already been mentioned, in November 1945 American officers Lawrence Linville and Golden were in Switzerland and wanted to take files direct from the I. G. Chemie. In a discussion with the S. C. O. they said they were not authorized to give any information to the S. C. O. but would be pleased to receive information.

As, in the opinion of the S. C. O., the German interest can not be proved, they could not support the American delegation in their endeavors; on the contrary, they considered it their task to obtain from the Americans documentary evidence and conclusive facts in order to clear up the case.

1729 The only thing the S. C. O. at length received was a document containing a list of questions. The S. C. O. suggested that all these questions should be examined together with the Americans and representatives of the I. G. Chemie and that the relevant files should be produced. They received no positive reply to their suggestion.

Although the S. C. O. repeatedly explained to the American authorities in Washington and to the American delegation that the hearing of the Appeal made by I. G. Chemie could not be postponed any longer and that it was there-

form absolutely essential that the convincing documents held by the Americans should be made accessible, nearly 2 years have gone by without a single document being produced to the Swiss Compensation Office. The American delegation, i.e., Mr. Jones, expressed the hope just prior to his departure that the matter could be delayed for a few months. That was a year ago.

In view of these many-sided interests, the S. C. O. considers it necessary to examine more closely the whole question of the connections of I. G. Chemie with Germany. A detailed investigation is also justified on the grounds that the presupposition for a provisional blocking, as laid down in Art. 9, Par. 3, of the Federal Decree of 16th February 1945, are not so severe as those in which a definite blocking is involved.

The decision on the appeal should therefore include a statement as to whether there is justifiable and reasonable doubt about the separation of the two firms.

1730 THE ATTITUDE OF THE SWISS COMPENSATION OFFICE TO THE MATERIAL QUESTION.

In making their two investigations, the Swiss Compensation Office has meticulously examined the question of the establishment of I. G. Chemie and all the relationships of the I. G. Chemie with sundry companies or persons in Switzerland and abroad: especially the business transactions of the company as well as those of Messrs. Greutert & Co. or Stürzenegger & Co., from the time of their establishment till the time when the investigation was made. The results of the investigations are set out in the enclosed report which forms an integral part of this expose.

The statement is arranged as follows:

a) The conditions of establishment and control.
b) The separation from Germany.
c) The results of the separation and critical commentary.

a): The conditions of establishment and control.

The I. G. Chemie was established on 25th June 1928 at the suggestion and according to a plan of Dr. Hermann Schmitz, member of the Board of Directors of I. G. Farben, through Greutert & Co., Bankers of Basle, on behalf of I. G. Farben. The capital was Frs. 20,000,000—20,000 shares of Frs. 1,000 each; price of issue 150; 50% paid up, 10 million capital and 10 million francs reserve. The shares were financed by the I. G. Consortium. Whether this first consortium was of purely Swiss character or whether it was a body closely related to I. G. Farben, is now immaterial because it is beyond all doubt that
1731 I. G. Chemie was brought into being by I. G. Farben.

It must be noted, however, that the I. G. Consortium was carried at Greutert & Co. Transactions through this account were only possible because of the large assets which I. G. Farben kept with Greutert & Co.

The proceeds arising from the subscription were used by I. G. Chemie for the purchase of Durand & Huguenin A. G., Basle, shares and shares of the Norsk Hydro.

On 20th February 1929 the capital was increased as follows:

Issue of 400,000 6% cumulative preference shares at Frs. 100—40 million francs; 20% paid up—Frs. 8,000,000.

Issue of 460,000 common shares at Frs. 500—230 million francs; 20% paid up—Frs. 46,000,000.

At the same time the 20,000 original establishment shares of Frs. 1,000 were converted into 40,000 at Frs. 500 and fully paid up.

Of the new issue of common shares, Frs. 30,000,0000 at 218% were taken up by a Swiss Bank Consortium, and a Dutch Bank Consortium took Frs. 15,000,000 at 225%. These shares were full paid up during 1929.

A further Frs. 80,000,000, nominal value—160,000 common shares were taken up by I. G. Farben at 150% and were paid up to the extent of 50%. These shares were of-

fered to I. G. Farben shareholders in exchange for shares or bonds of the I. G. Farben.

Frs. 105,000,000—210,000 shares were issued only formally and 20% paid up. They were taken up by Greutert & Co. on behalf of the

1732 I. G. Consortium, but could only be disposed of according to instructions of I. G. Chemie. The I. G. Chemie had further the right to demand them for use in joining up with other companies.

The capital situation resulting from this issue was:

	No. of Sh.	Amount	Paid Up	Voting Power
6% Cumulative Pref. shares at Fr. 100	400,000	40 Mill.	8 Mill.	400,000
Common shares at F. 500 full	130,000	65 "	65 "	130,000
Common shares at F. 500 half	160,000	80 "	40 "	160,000
Common shares at F. 500 20%	210,000	105 "	21 "	210,000
Total:	900,000	290 Mill.	134 Mill.	900,000

The total capital of nominally Frs. 290 mill., paid up to the extent of Frs. 134 millions compares with Fr. 100 million in open reserves.

This issue is connected with the so-called Dividend-guarantee and Option Agreement between the I. G. Farben and I. G. Chemie. Under the agreement the I. G. Farben guarantees the same dividend on the common shares of the I. G. Chemie as they pay in Goldmarks on their own common shares without deduction of tax on capital earnings. The guarantee was given so long as the I. G. Chemie existed. I. G. Farben, nevertheless, had the right, for the first time to December 31, 1938, to rescind the

1733 agreement for the end of a business year by giving notice 3 months in advance. In such case every holder of common shares in I. G. Chemie had the right to exchange his shares for I. G. Farben shares.

On the other hand, I. G. Chemie gave I. G. Farben, or to anybody nominated by I. G. Farben, an option to demand at any time, also repeatedly, the surrender of the participations and securities at their book value and the simultaneous payment of amounts booked in the Reserve Account for participations and securities. Unless the

agreement as such has been cancelled, this right shall extend over a period of five years after the expiration of the dividend guarantee and shall apply to the participations and securities as well as the accrued special reserves as they stood at the time of the guarantee expiration. It follows from these transactions and agreements made at the time of the foundation that the I. G. Chemie is the idea and creation of Privy Counsellor Dr. Hermann Schmitz, President of I. G. Chemie and, respectively, Member of the Board of Directors of I. G. Farben. By means of the option agreement, the I. G. Farben secured for itself all the participations and securities of I. G. Chemie but gave in their turn a guarantee for the earnings of I. G. Chemie's common shares. From the economic point of view, I. G. Chemie was controlled by this agreement.

As for the capital control, it is hard to make any exact statement. It is definite at any rate that, according to the protocol of the Administrative Board, dated 25th January 1929

1734 the preference shares were taken over by a consortium closely associated with I. G. Farben. It must therefore be accepted that the Frs. 40,000,000 preference shares, 20% paid up, and carrying 400,000 votes, were under German influence at the time of the foundantion of the company.

The resale of these shares will be gone into when the separation is dealt with. It is sufficient to note here that the shares were always held by firms associated with the I. G. Chemie-Greutert & Co. Complex. (Compare the statement in the examination report.) So far as the common shares are concerned, it is certain that Frs. 80,000,000, 50% paid up, were taken over by I. G. Farben for their share-and bondholders for purposes of exchange. It follows that 160,000 shares (Frs. 80,000,000 nominal value) carrying 160,000 votes may be regarded as German.

With the proceeds arising from the increase of capital the I. G. Chemie acquired the American participation, that

is to say, the majority shareholding in the American I. G. Chemical Corp., hereinafter referred to as Amigchem. This concern was afterwards renamed General Aniline & Film Corporation. Amigchem (or GAF) have in their portfolio about 80,000 I. G. Chemie shares (cross holding).

In 1931 the Norsk Hydro, a company under French influence in which I. G. Farben and I. G. Chemie participated, acquired 20,850 fully paid I. G. Chemie shares.

Without going into further detail it can therefore be stated that from the point of view of capital, that is to say, by voting

1735 power, there was a preponderant German interest during the first years.

The voting position was as follows:

Preference shares	40 mill.	= 400,000 votes	German
Common shares (half)	80 mill.	= 160,000	German
" " (full)	65 mill.	= 130,000	Swiss, Dutch, German, etc.
" " (20%)	105 mill.	= 210,000	The Administration.

As the Frs. 105 million shares (20% paid up) and carrying 210,000 votes, were only issued formally, the preference shares with 400,000 votes and paid up to the extent of Frs. 8,000,000 held the decisive position.

This German economic and voting influence was in accordance with the German influence on the Administrative Board. From 1928 till June 1940 the President of the Board of I. G. Chemie was Dr. Hermann Schmitz, member of the Board of Directors and later on Chairman of the Central Committee of I. G. Farben. During that period he was the controlling personality in I. G. Chemie whose hand held the reins. In addition, Carl Roesch, an I. G. Farben man, and Ed. Greutert, a Swiss, exercised considerable influence on the business. The influence of the other Swwiss members of the Board was of minor importance.

In the course of time Greutert was able to develop his influence after the limited participation of Messrs. Euler and Merton, representatives of the Metallgesellschaft A. G., Frankfurt, representing

1736 a total of Frs. 3,800,000 in Greutert & Co., had gone over to the Industriebank A. G., Zurich, in 1936, after passing to C. Mollwo (also connected with the Metallgesellschaft A. G.) and from there to VISCA A. G. The Industriebank in Zurich was established in 1929 with German capital. Since 1936 the sole shareholders of the Industriebank have been Swiss. The shareholders, according to the investigation made by the Swiss Compensation Office, paid the majority of the purchase price from their own funds, or the amounts not paid were advanced by another company closely associated with the Greutert-I. G. Chemie Complex.

As Greutert became more independent so his influence increased. He worked with the fixed intention of severing his banking business from German ties. In this conection it should be noted that Greutert & Co. had considerable credits in Germany while the I. G. Farben concern owned large amounts deposited with Greutert & Co. As a result of the currency and transfer difficulties, the continuance of these transactions and more especially unrestricted exchange of mutual obligations was made very difficult, if not almost impossible.

At the end of 1936 and beginning of 1937, I. G. Chemie and Greutert & Co. were able to effect a general compensation with I. G. Farben which, from the economic point of view, implied a considerable separation from Germany. In 1937, in connection with other matters, the S. C. O. gained definite knowledge of this compensation. The German Foreign Exchange Control Offices, for their part, approved this compensation on condition that the balance standing to the debit of the Swiss group

1737 should be put at Germany's disposal in free currency. The compensation involved sums totalling about RM 64,000,000 against RM 70,000,000. The difference of RM 6,000,000 was credited largely in dollars in New York and in sterling in London to the I. G. Farben, respectively Laenderbank A. G., at the end of 1937 and beginning of 1938.

b) Separation from Germany.

Whether the reasons for the concentration on the separation from I. G. Farben were to be found in the desire of the Swiss partners and the outside developments were effectively used for this purpose, or whether external developments were the basic reason for the separation, is irrelevant, because in order to judge the question of German control it is not the motive for the separation which is of importance but the unobjectionable actual liberation from the German ties. The motive may possibly be circumstantial evidence on which to judge indefinite arrangements in one case or another.

To indicate the business policy followed by Greutert it may be emphasized that in January 1931, the limited participation of Frs. 3,800,000, held by the Metallgesellschaft, respectively Messrs. Euler and Merton, was redeemed at 300%, that is Frs. 11,400,000, with the help of the Greutert & Co. Bank. The bank took over Frs. 4,800,000 for their own account, which was written off by the end of 1931. Practically speaking, Visca A. G. took over the limited participation; Visca, founded in 1924, was formerly under German influence. During 1931, the complete parcel of shares was transferred to the Greutert & Co. Bank (Secretariat B). Although the shares changed hands, the share capital remained always in the Greutert—I. G. Chemie circle.

1738 The settlement with the German shareholders took place by the transfer of I. G. Chemie shares in a ratio of 1:10. Without being influenced from outside, Greutert appears to have started the separation from Germany as early as 1931.

It is noteworthy, too, that I. G. Chemie only took over the sleeping partnership in Greutert & Co. after I. G. Farben had confirmed that bank participations were not included in the option agreement.

In their annual report of 1936, the I. G. Chemie pointed to the difficulties which arose from the various develop-

ments in the field of currency, especially as they affected the execution of the dividend guarantee agreement. It must be emphasized that an agreement with the German partners could not be arranged.

The minutes of the meetings of the Administrative Board of I. G. Chemie during the period 1937-1940 give an interesting picture of the difficulties and points which had to be considered.

In the minutes of 18th March, 1937, the question of the need for the separation of the dividends on I. G. Chemie shares from those of I. G. Farben is dealt with, and the Committee of the Board was given instructions to proceed with the negotiations with I. G. Farben for an amendment to the dividend guarantee agreement.

In a meeting of the Administrative Board, held on 10th January, 1938, Greutert pointed out the disadvantages of the option agreement and the necessity of getting rid of this option obligation. It was understood that this would involve the cancellation of the

1739 dividend guarantee, which would have advantages and disadvantages. Director Germann emphasized that the prestige of the I. G. Chemie would always suffer, if their dividend policy was dependent on third parties.

The difficult question was, what they would have to offer the I. G. Farben for the option right; a right of preemption on certain assets was discussed.

In the discussions of 31st March 1938, the right of exchange referred to in Par. 9 of the agreement played an important part, because this should not be applied so that the I. G. Farben, through exchanging, would not have to take over I. G. Chemie shares from the German shareholders. The voting power and capital influence of I. G. Farben had to be reduced.

At this time a compromise was sought by arranging that in spite of the cancellation of the agreement, the contact and co-operation should continue. This arrangement never got beyond the stage of being discussed. I. G. Chemie

pressed more and more for complete cancellation of the dividend guarantee and option agreement.

In June 1938, a reorganization of capital was arranged because it appeared that the projected development plan (negotiation of the further 210,000, 20% paid up common shares) could not be carried out. 200,000, 6% preference shares at Frs. 100 nominal, paid up 20%, and 200,000 common shares at Frs. 500 nominal 20% paid, were withdrawn.

At the same time 10,000 common shares, at Frs. 500, 20% paid up, were fully paid.

1740 The resulting capital position was then:

200,000 6% pref. shs. at F. 100, pd. 20%	= 4 mill.	Votes =	200,000
140,000 fully paid common shares	= 70 mill.	"	140,000
160,000 50% paid common shares	= 40 mill.	"	160,000
Total paid:	114 mill.		

In November 1938 the efforts to obtain cancellation of the dividend guarantee and option agreement were given fresh impulse by the tendency in America to boycott German goods! The first job was to get rid of the option obligation (Minutes of 23rd November, 1938). Any purely legal but one-sided proceeding was inadvisable, however, *because there was a danger that the right of exchange would suddenly make I. G. Farben majority shareholder in I. G. Chemie!!*

The efforts made in Basle were supported, both orally and in writing, by the directors of GAF. They pointed out the danger of confiscation of the American company in case of an economic war or involvement in war (Minutes of 21st March 1939). In the middle of September 1939, further lengthy negotiations with I. G. Farben took place (Minutes of 7th and 23rd September, 1939). The final result of those discussions was that the right of option was converted into a right of pre-emption.

The agreement was confirmed as follows by I. G. Farben on 21st September, 1939:

> "... and herewith confirm the arrangement whereby the option referred to in Par. 1 of the agreement made

1741 between yourselves and us in 1938 has been converted into a pre-emption right in our favor which must be exercised within one month after the receipt of a notification by you; the other clauses of Par. 1 remain in force and the pre-emption right shall be exercised under the same conditions as the former option. The necessary approvals for this have been given us in the meanwhile."

This alteration of the agreement is of fundamental importance.

Up to this time the I. G. Farben had the right and the possibility of demanding the sale of the participation to themselves unilaterally.

After the transformation of the right of option, i.e., the right of purchase, into a right of pre-emption, they could only acquire the participations if the I. G. Chemie sold them to a third party. Only then could I. G. Farben, within one month, demand that the sale be made to them. I. G. Chemie therefore had to sell before I. G. Farben could exercise their right.

The negotiations which were very tough and difficult had shown a first result.

Characteristic for the slogan to "break the ties" is perhaps also the fact that the I. G. Chemie, in accordance with the Fed. Decree of 30th October 1939 concerning the transfer of domicile of legal persons in time of war, had caused their name to be entered in the special register. According to this decree, the companies entered in that register were considered, in case of Switzerland being at war, to have their domicile in the same place as the seat of Government, (Board

1742 minutes of 21st November, 1939). Dr. Schmitz did not want to put his signature to this decision.

The GAF proposed special measures in the United States of America to separate the firm from Europe, whereby it is possible that a subconscious desire of the GAF directors to acquire the American business for themselves may have found expression. The proposals made were not accept-

able to the I. G. Chemie. They wanted to cancel the dividend guarantee agreement entirely and combine with this the withdrawal of all or the larger part of the I. G. Chemie shares from Germany (Minutes of the Board meeting of 29th January 1940.)

The ultimate aim was declared to be the *cancellation of the agreement without reservation* and the withdrawal of all I. G. Chemie shares which were in Germany (Minutes of 15th April, 1940).

It is characteristic that Dr. Hermann Schmitz did not wish to sign the last three minutes.

After lengthy negotiation, I. G. Farben declared their readiness to cancel the dividend guarantee agreement in its entirety (letter of 6th June 1940). The Administrative Board noted this fact with approval. (Minutes of 10th June 1940; compare Investigation Report, page 13, which contains details of the arrangement, especially the reclaimed securities and the price to be paid for them).

The general meeting of 29th June 1940 then decided on the following re-organization of capital:

1743 Withdrawal of 100,000 pref. shares, 20% paid up, and
50,000 common shares, 50% paid up.

They are the shares which were bought back from I. G. Farben under the repeal agreement, for which Frs. 10,000,000 were paid in cash, and RM 2,100,000 shares of Westfälisch-Anhaltische Sprengstoff A. G. and RM 500,000, 3% Funding Bonds were ceded.

After this reorganization the capital position was as follows:

100,000 preference shares at 100	= 10 mill.	20% = 2 mill.	= 100,000 votes
140,000 common shares at 500	= 70 mill.	100% = 70 mill.	= 140,000 "
110,000 " " " "	= 55 mill.	50% = 27.5 mill.	= 110,000 "
Total	135 mill.	99.5 mill.	350,000 "

The new President, Dr. Iselin, took the chair for the first time at this General Meeting. With the acceptance of the repeal agreement, Dr. H. Schmitz retired from the Administrative Board.

c) Effects of the repeal of the agreement and critical commentary of the whole transaction:

1. The decisive influence of I. G. Farben on I. G. Chemie was above all else based on the dividend guarantee and option agreement. By means of this agreement the I. G. Chemie was economically controlled. By repeal of this agreement the ties were broken. The investigation revealed that from this time on the contact had almost entirely ceased. Only a few unimportant letters were exchanged. There may have been certain exchange of telegrams and telephone-conversations, but those were principally on the subject of liquidation questions.

1744 2. Insofar as the capital and voting control is concerned, we have the following picture:

aa) 100,000 preference shares have been since 1929 and 1939, respectively, the property of the Industriebank, Zurich, and the Sopadep, Lausanne, respectively (compare the chart on page 4 of the Investigation Report). The Industriebank was established in 1929. In 1931, Greutert took over the shares of the Industriebank and in 1936 sold them to the present Swiss shareholders, who, according to their financial position, either paid for them out of their own funds, or took up credits. There are only Swiss shareholders who have arranged a mutual pre-emption agreement. Apart from this there is an option right in case of death in their favor. These rights are being asserted through RIGIDOR A. G., as trustee for the other shareholders, who is the only company holding shares of the Industriebank.

The shareholders of Rigidor, Berne, are entirely Swiss nationals, domiciled in Switzerland, who have purchased their shares with their own means, or partly by means of credits taken up. In this case, too, there is an option in case of death and this is in favor of PERPETUA, A. G., Lucerne, for the other shareholders.

Perpetua is a creation of the Greutert & Co. Bank. Today, of the capital of 1,000,000 (original capital 100,000,

increased in 1939 to 1,000,000), Frs. 700,000 are owned by Sturzenegger & Co., successors to Greutert & Co., and 300,000 is owned by Sopadep, Lausanne.

1745 Insofar as Sopadep is concerned, this company was established in 1939 as an evacuation company for the Greutert & Co. Bank. The shareholders are Swiss. The financing of the company was done through Greutert & Co., partly via Perpetua, Lucerne, insofar as the individual shareholders did not pay from their own means. No evidence was forthcoming indicating a legal or economic dependence on German or German-controlled firms.

In view of the above facts, which cannot be refuted by any documents, one comes to the conclusion that the whole preference share capital is in Swiss hands. (See chart at the end of the Investigation Report, with regard to mutual ties).

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bb) With regard to the common share capital, it was ascertained that of the 140,000 full common shares the GAF held 56,300 and Sturzenegger & Co. 13,385; the Norsk Hydro holds about 20,000.

Of the 140,000 half common shares (50% paid up), 28,600 are owned by the GAF. Apart from this, there are larger or smaller parcels of fully and half-paid common shares in the possession of Swiss companies and persons.

A more or less true picture of the distribution of the common share capital was procured on the occasion of the transformation of the bearer shares into registered shares.

Out of the total 250,000 common shares (full and half), the

1746 84,900 resp. 21,200 held by GAF and Norsk Hydro have not yet been transformed. The ownership of 42,659 shares has not yet been ascertained. Of the 101,241 shares which were transformed, 75,944 were traced as of December 19, 1945, to Swiss, 1,583 to Americans, 5,834 to Dutch, 10,843 to Belgians, French and English, etc.; 1,660 shares were traced to Germans. If it is assumed that the 42,659 shares which have not been located are all in

the hands of Germans, the total number owned by Germans would be 44,319. It is, however, not definite that these 44,319 shares belong to Germans or, insofar as this applies, to Germans in Germany. It is only Germans in Germany, however, who fall within the scope of the Washington Accord. The 44,319 shares represent 17.7276% of the 250,000 common shares, or 12.6625% of the total issue of 350,000 shares.

It follows then, that one cannot speak of German control with regard to the capital or voting rights.

3. Now with regard to the question of administrative control: with the annulment of the dividend guarantee agreement, Dr. H. Schmitz retired from the Administrative Board in June 1940. As correspondence between I. G. Farben and I. G. Chemie stopped almost entirely, no influence of any kind on the part of this man could be traced. Carl Roesch, the other competent German director, resigned in January 1941.

The only person who remained on the Board that was not of Swiss nationality was Dr. Albert Gadow, the brother-in-law of Dr. Schmitz. Dr. Gadow came from Germany in 1931, where he had filled an administrative post, first as secretary to the I. G. Chemie and then, in 1936, to the Administrative Board. After the retirement of Messrs. Schmitz

1747 and Roesch, he became one of the leading lights in I. G. Chemie. The whole Administrative Board expressly declared, however, that he was not empowered to make decisions on his own, but fitted organically into the body of the Administrative Board. As far as he personally is concerned, no reproach can be made on political grounds or with regard to his dealings with the authorities. In order to do away with any suspicions that there were still connections with I. G. Farben, he resigned from the Board at the end of 1945. He draws a pension.

It can therefore be claimed that there is no German influence exercised on the administration, especially since the

elimination of Dr. Gadow, if any suspicions could be or were mentioned on his account.

In reviewing the whole transaction and present situation critically, the following questions are still to be considered:

I. Where did the Swiss group obtain the funds to acquire the decisive parcels of shares?

In considering this question it must be borne in mind that the preference shares were controlled by the Swiss group. These 100,000 votes required a capital outlay of Frs. 2,000,000, in view of their being 20% paid up, an amount which the interested parties could get together without difficulties.

Greutert & Co., thanks to their relationship with I. G. Farben, were able to make considerable profits which were, to a large extent, assigned to reserves. Capital, open reserves and special reserves

1748 at Greutert & Co. amounted on an average to 10/11 millions. In addition to this, there was a currency reserve of 6 million which, in 1931, was largely used for the liquidation of the limited participations of the gentlemen of the Metallgesellschaft. The financial strength of the Bank is clearly seen from their balances which show in 1926 Frs. 167.97 million, 1928, Frs. 490.58 million, 1930, 368.48 million, 1932, 399.93 million, etc.

The general compensation made in the years 1936-1937 released considerable sums from hidden reserves which remained in the business.

Apart from the ordinary bank transactions, Greutert & Co. carried so-called Secretariat and Consortium accounts through which interesting business transactions were passed without their appearing in the profit and loss account. The investigation has revealed that Greutert & Co. passed through these accounts securities and foreign exchange transactions which resulted in profits of over 120 million francs in the years 1930/1937, the large majority of which was credited to the I. G. Chemie, also to the Bank

and affiliated concerns. In view of these tremendous profits, it is understandable that the leading lights in Greutert & Co. received special compensations in the form of securities and credits. For example, a parcel of VISCA shares was given gratis to Mr. Mollwo and Mr. Greutert in September 1934. Later on, these shares were exchanged for Perpetua shares when the Visca was liquidated, and their assets transferred to Perpetua.

1749 These special payments, in proportion to the profits and the transactions arranged, do not appear to be extraordinary.

The taking over of the 100,000 preference shares of I. G. Chemie is entirely compatible with the financial strength of the various groups.

The total capital of the firms, Industriebank, Rigidor, Sopadep, and Perpetua, amounts to 7½ million francs which were raised by Sturzenegger & Co. and a number of Swiss shareholders. The 2 million preference shares are included in this parcel. This amount, in view of the means at the disposal of the groups, could be collected without any difficulty.

With regard to the common shares, a large portion is tied up by the cross-holding GAF-I. G. Chemie, so that the common shares held by themselves or by friendly Swiss nationals together with the preference shares guaranteed the control.

II. A conspicuous fact may be the inter-dependence of the firms Perpetua, Rigidor, Sopadep and Industriebank A. G., but even in this case there is nothing extraordinary about it. The group gathered around Greutert had to strengthen their position so that third parties not belonging to the Complex or representing special interests could not gain influence by purchase or inheritance.

The somewhat complicated construction arose from the development of the Group, and the appellants quite rightly claim that they consciously forewent any revolutionary

changes because this, too, would have been interpreted as cloaking maneuvres.

1750 III. A further question which one must ask oneself concerns the interest resp. the value which the cancellation of the dividend guarantee agreement could have had for both parties.

As far as the legal side of the agreement is concerned, it must be noted that, according to Par. 3, the I. G. Farben did not only have to pay the amount necessary for the payment of a dividend on I. G. Chemie shares proportionate to that on the I. G. Farben shares, but also the necessary amount for the distribution of such dividend in accordance with the statutes and the law. In other words: the reserves, too, had to be endowed accordingly.

The difficulties arising from the German currency restrictions made it practically impossible for the I. G. Farben to abide by the terms of the agreement.

I. G. Chemie, however, regarded the agreement as a unit and came to the legal conclusion that, if the dividend guarantee could not be fulfilled, the right of option, too, becomes invalid.

In judging the value of the option, it must not be overlooked that the I. G. Farben would have had to pay the book value less special reserves in free Swiss currency. The most important participation of the I. G. Chemie is the shares in the GAF which, as the investigation has shown, were entered in the balance sheet at a normal rate quoted on exchange (one $ = 4.23). It follows that the I. G. Farben would have had to raise a sum of approximately 145 million francs from the "A" shares alone, since the I. G. Chemie had deliberately never opened such a special reserve account for this purpose. It is also significant that

1751 the "B" shares which, so far as the GAF is concerned, control the votes; were acquired by Greutert & Co. and the firms connected with them, so that I. G. Chemie only once held 200,000 shares temporarily. This

arrangement was made deliberately, as apparent from memoranda, so that the shares controlling the votes should not fall under the option. It was only shortly before or shortly after the cancellation of the agreement that the shares were acquired by the I. G. Chemie.

The other participations were also entered in the balance sheet at the rate quoted on exchange. The right of option could, therefore, hardly have greater value than the amount which I. G. Farben had to pay for taking over the securities. An addition, it must not be overlooked that, in view of the great need for foreign currency, an amount of 145 million francs and more which the I. G. Farben had to raise for the GAF common shares alone, was even for them an almost unattainable amount.

By the repeal agreement, however, the I. G. Farben succeeded in disposing of 50,000 half shares in I. G. Chemie at a favorable rate, and also in putting at the disposal of the Reich, aside from interesting German securities (Anhaltische Sprengstoff-Fabrik), 10 million Swiss francs in currency, and that at a time when the German Reich sought by all means to acquire Swiss francs. Furthermore, in this way, the I. G. Farben were able to avoid unpleasant legal arguments.

Apparently, the I. G. Farben, which had fought against the surrender of the option right to the last, had taken the following

1752 economic considerations into account which have come to the attention of the S. C. O. in other cases, too.

I. G. Farben had to reckon with the entry of the U. S. A. into the war. If the option right was still in existence, the GAF would be confiscated and would be lost to them. The loss, however, would have hit I. G. Chemie in the first place, in which Swiss and other legitimate interests were represented, and these would naturally have made considerable reproach to I. G. Farben.

If I. G. Farben give up their option right as well as the close connections, I. G. Chemie is then in a position, as a

Swiss company, to defend and save their property. In any case, no reproach could be made to I. G. Farben.

If Germany had won the war, a fact which in 1940 was generally accepted in Germany, I. G. Farben would most certainly have had the power not only to acquire I. G. Chemie and other Swiss firms, but also other interesting companies in this branch throughout the whole world. Hence, I. G. Farben had nothing to lose, but everything to win.

IV. Finally, the question must be asked whether, after the severance of the ties, the I. G. Chemie or Greutert & Co. have carried on activities which could cast doubt on the finality of the severance.

Meticulous examination of all files showed that, practically speaking, since 1940 correspondence has almost entirely ceased.

1753 On the occasion of the issue of new shares through Norsk Hydro, I. G. Farben were to try to obtain a permit for the use of blocked Swiss credits in Norway, but as this was not possible, the question of a credit was considered. As Norway was occupied, it seems quite natural that I. G. Chemie should seek to take advantage of its former associates, since all transactions in Norway had to have the approval of the German occupying authorities.

In 1934, Parta A. G., Lausanne, took up a participation in a French company in the interests of I. G. Farben in order to introduce BAYER products. With the cancellation of the dividend guarantee agreement, Parta could not simply stop their activities and a temporary solution had to be found. In 1944, the interests in the Parta were disposed of, the reason given being that one did not want anything more to do with a firm which was connected with a German concern, if only economically.

The correspondence with PLASKON Co., New York, concerning the Maatschappij voor Industrie en Handelbelangen, Amsterdam, deals entirely with liquidation activities. Other correspondence could not be found. When one con-

siders the former intensive cooperation and when one takes into consideration also that the connection could not be absolutely broken from one day to another, these few transactions cannot be considered as derogatory.

With regard to the changes in the Board of Directors of the GAF, a difference must be made between two interests: the technical and the financial sides.

1754 I. G. Chemie is predominantly a financing company. It concerns itself, therefore, only with finance and administrative questions. When questions of a technical nature cropped up, the GAF had to turn to people whose job it was to solve technical questions. If after cancellation of the dividend guarantee agreement I. G. Chemie could not take the expected interest in the administration of GAF, this was attributed to the special conditions prevailing. Dr. Iselin did not even have the opportunity of fulfilling his mandate as Director of the GAF, because the necessary visa for the journey to America were refused to him.

No transactions could be traced to Sturzenegger & Co. (formerly Greutert & Co.), indicating the making of any gentlemen's agreement.

In the few cases (a total of three), in which the Bank still acted for I. G. Farben, the transactions concerned were purely bank transactions which would fall within the scope of any normal bank business, without any closer ties between the contracting parties. Since 1940, Sturzenegger & Co. have participated in only one credit operation in favor of I. G. Farben and then only as a sub-participant. From them no conclusion can be drawn that the bonds tying them to I. G. Farben had not been severed. The participation in the Laenderbank, which had existed since the 1920's, could unfortunately not be disposed of by I. G. Chemie or Greutert & Co., neither could it be included in the compensation effected in the years

1755 1936 and 1937. According to the information given by a representative of the Laenderbank, this company does not belong to I. G. Farben.

The other affiliated companies had no further ties with I. G. Farben, neither were they acting in any way for that company, with the exception of Parta A. G., a case which has already been explained.

If there should remain the slightest suspicion, attention is drawn to the word of honor and written declaration of all the Directors, the managers and confidential clerks of the I. G. Chemie, including Dr. GADOW, Sturzenegger & Co., the directors and shareholders of the companies belonging to this Complex, Industriebank A. G., Rigidor, Sopadep and Perpetua, in which declaration—under reference to penal laws—ties, gentlemen's agreement, etc., with I. G. Farben or other German companies or persons are emphatically denied.

The S. C. O., after objective examination of all documents and evidence, is convinced that the liquidation of the contact with I. G. Farben circles, which took place in June 1940, was carried through seriously, conclusively, and without reservations.

THE ATTITUDE OF THE SWISS COMPENSATION OFFICE TO THE APPEAL.

1. The appeal of the I. G. Chemie is directed against the written decision of the S. C. O. of 15th November, 1945; the time of 30 days for the appeal has been observed.

1756 2. In the Appeal, as also in the complaint, which must be considered as an integral part of the Appeal, the S. C. O. is censured for having ordered a blocking contrary to the results of their examination, on the instructions of the competent authorities. It is then claimed that the S. C. O., as an independent administrative body, an association of public law, should alone have the competence to decide, and that it should not be permitted that other Federal Departments give the Swiss Compensation Office instructions other than those of purely general nature. The S. C. O. is also of the opinion, in principle, that they have to decide in individual cases. It is, however, not up to them to decide on the purely administrative question

whether the superior department, apart from general instructions, is authorized to give instructions in an individual case.

In the present case the Federal Department of Public Economy in their Decree of 30th October 1945, gave the S. C. O. instructions to block I. G. Chemie. The result of the first examination revealed nothing that might have justified a blocking. The S. C. O. communicated this decision to the I. G. Chemie by telegram, mentioning expressly that it was by decree of the Federal Department for Public Economy, and this was confirmed in writing on 30th October and 15th November 1945, respectively. It is admitted that at that time the question of whether the usual procedure, Clearing Commission, etc., should be adopted was not fully cleared up, and it was later shown that it was preferable to have a special Commission of Appeal to deal with appeals.

1757 The necessary guarantee was thereby given that not the same authority which had issued the instructions to the S. C. O. would decide on the appeal against such measure.

The commentary on the correspondence exchanged with Bundesrat Petitpierre has really nothing to do with the S. C. O. It must only be pointed out that the S. C. O. itself had resolved to make a supplementary investigation in order to clear up certain points, especially the activities and importance of the German Director, Dr. GADOW. Since at this time there were still certain doubts about the complete separation of I. G. Chemie from I. G. Farben, a provisional blocking under the terms of Art. 9 of the Federal Decree of the 16th February 1945 was undoubtedly justified. This blocking was still more justified at that time because one could assume that the Allies would, as they had promised, produce infallible evidence of the control of I. G. Chemie by the Germans, within a few months. The statements which appear on page 15, Par. c, of the Appeal regarding the existing doubts are made on a false assumption, because the management of the Swiss Com-

pensation Office had and could have doubts about the absolute separation, in view of the material which was supposed to come from Germany.

It must finally be added that the I. G. Chemie also had an interest in the definite clearing up of the situation so that the separation could be conclusively ascertained by an independent neutral party. It may, perhaps, be mentioned that insofar as the S. C. O. is informed, the Swiss Legation subsequently intervened in Washington on behalf
1758 of I. G. Chemie, as the situation could be considered as finally cleared up by the second investigation. This was the result of the investigations made by the Swiss Compensation Office.

Since the activities of the Swiss Compensation Office have been attacked by the Appellants, it would seem to be in the interest of a final clarification of the matter if the independent Appeal Authority could decide this appeal on the basis of the files, also from the material point of view, that is to say, to decide the question of whether German control of I. G. Chemie exists as heretofore, or, in other words, whether serious doubts about the severance of the ties are justified.

Now, as regards the question of the activities of the auditors from the S. C. O., it must only be pointed out that the investigation is not a criminal one but an administrative procedure and that therefore there are no rules of procedure. If the Public Prosecutor of the Canton Baselstadt intervened, it was at the request of the Appellants, but he had to admit that the S. C. O. had only acted within their competency and that there could be no question of house searching, in the sense of a penal procedure. It is understood that the S. C. O. would have sought connection with the public prosecutor if the company to be investigated had not voluntarily given the information required and produced the required documents. This would have insured the co-operation of the Police prescribed
1759 in the Federal Decree. The sole fact that the auditors approached the Appellants and requested informa-

tion, and the production of documents cannot be considered as an unjustified house search.

With regard to the arguments brought forward in the plea, the S. C. O. must point out that the extension of the second investigation to all relevant points was intended from the beginning and that there had never been any intention of confining the inquiries to the activities of Dr. Gadow. It is, in particular, the method which the I. G. Farben has adopted with other firms for maintaining their interests which caused the S. C. O. to extend their inquiries, in order that every doubt could be dispelled as to whether such method had been adopted in relation to the I. G. Chemie.

It is correct that the letter dated 15th November 1945 and referred to in Par. 10 of the Plea was wrongly addressed. It is, however, not correct to say that the letter was antedated or signed in blank. As the S. C. O. has already explained to the directors of I. G. Chemie, there was a mistake made at the Post Office, a post office official having, in error, dated the post stamp 19.00 hours and put the date 14th November instead of the 15th November. This mistake has been confirmed by the Post Office in writing, and the S. C. O. is prepared to produce relevant documents, although it considers that this point is of minor importance. The other points in the Plea have been outdated by events and are, therefore, of no

1760 consequence, so that it is unnecessary to go into further details.

Insofar as the material side of the investigation is concerned, that has already been explained.

PLEA BY THE S. C. O.

1. Should third parties, that is to say, the Joint Commission—assuming that they take part in the Appeal—produce new documents to the Appeal Commission, these should be put at the disposal of the S. C. O. and eventually of the Appellants for examination, analysis and commentary.

2. With regard to the material side, it should be established that no German control of I. G. Chemie exists and that, consequently, this company falls neither within the scope of the Federal Decree of February 16, 1945, nor of the Washington Accord.

3. The further requests by the I. G. Chemie in their appeal should be turned down.

Dated 24th September 1947.

1761 **Exhibit B. Report of the Swiss Compensation Office.**

Investigators Report

Concerning the result of the investigations by the Swiss Compensation Office of the International Company for Chemical Enterprise (I. G. Chemie), now called the International Industrie & Commercial Participations Company (Interhandel), Basel (hereafter shortly called I. G. Chemie.)

I. *Previous Investigations:*

By order of President M. Schwab, the Investigation Section of the SCO executed from June 11 to July 7, 1945 the first, and from November 5, 1945 to February 25, 1946, the second, supplementary investigation of the I. G. Chemie, Basel, as well as of the Bank Sturzenegger & Company, Basel. The six participating investigators furthermore investigated the personal relationships of the authoritative gentlemen of I. G. Chemie and its affiliated companies as well as the files and, in so far as necessary, the books of all the related companies, foundations, etc. A table is attached to this report of the investigation which lists the names of these firms and persons. Besides investigating the documents surrendered by the persons concerned, the investigators also examined all the rooms on the premises of I. G. Chemie, of Sturzenegger & Company in Basel, at the residence of Mr C. Mollwo, member of the Board of Directors of various affiliated companies,

Lausanne; and of Dr. Gadow, member of the Board of Directors of I. G. Chemie. In the search of documents which might help the investigation at this time the following documents were examined:

	I. G. Chemie	Sturzenegger & Company	Affiliated companies and persons (other investigations)
Dossiers about	250	450	70
Containing files about	23,000	55,500	2,000
Account books	30	110	25

The most essential documents were submitted by the investigators to the SCO in the original; this gave a total of about 2,500 documents.

The investigations were furthermore extended to quite a number of safes which important persons still with I. G. Chemie or with its affiliated companies maintain in Swiss banks; reference is made here to the separate list annexed to this summary.

1762 II. *Development until the Separation of I. G. Chemie, Basel, from I. G. Farben, Berlin*

I. G. Chemie was founded upon the initiative of the gentlemen of the I. G. Farbenindustrie A.-G., Berlin/Frankfurt in the year 1928, approximately at the same time as was the American I. G. Chemical Corporation, New York. This fact, as well as the influence of I. G. Farben upon the business of the I. G. Chemie until far into the 30's, is not at all denied by the directors in Basel.

The original share capital amounted to 20 million francs and was obtained from a consortium which was at that time connected with the Bank Ed. Greutert & Company, Basel.

In 1929 I. G. Chemie increased its share capital to nominal 290 million francs and its securities were quoted on various Swiss and foreign exchanges. Four large Swiss banks participated in the issue as well as Greutert & Company, Basel. After this increase I. G. Chemie showed the following capital:

		(Millions)	(Percent)	(Millions)
(a)	400,000 6 percent preferred shares @ nominal value Fr. 100—	40	20 Paid up	8
(b)	130,000 original shares at Fr. 500—	65	100 " "	65
(c)	160,000 original shares at Fr. 500—	80	50 " "	40
(d)	210,000 original shares at Fr. 500—	105	20 " "	21
	900,000	299		134

From 1938 to 1940 the following I. G. Chemie shares were still outstanding:

(a) 200,000 6 percent preferred shares (reduction of the preferred shares capital on June 29, 1938 by 200,000 shares)

		(Millions)	(Percent)	(Millions)
	@ nominal Fr. 100—	20	20 Paid up	4
(b)	140,000 original shares Fr. 500—	70	100 " "	70
(c)	160,000 original shares Fr. 500—	80	50 " "	40
	500,000	170		114

The following statements give information concerning the ownership of the various shares categories. This information is based upon lists of the shareholders at that time found in the Bank-Greutert/Sturzenegger & Co.

1763 *Re: a.*

The 400,000, or after the reduction, the 200,000 preferred shares were distributed as follows:

Six Percent Accumulative with 20 Percent Paid Up Preferred Shares of Nominal Value 100 Francs

Nr. 1-400000 / Ed. Greutert & Cie., Basel / June 19, 1929

Nr. 1-100000
CHEMO, Holland
December 24, 1929
100,000 shares

Sopadep
Lausanne
July 31, 1939
100,000 shares

Nr. 100001-200000
Eidg. Bank, Zurich
September 20, 1929
100,000 shares

Industriebank AG
Zurich
September 21, 1929
100,000 shares

Nr. 200001-300000
Osmon A. G., Schaffhausen, Sept. 24, 1929
100,000 shares

Ed. Greutert & Co.
Basel
December 31, 1936
100,000 shares

Nr. 300001-400000
Ed. Greutert & Cie., Basel
June 29, 1938
(100,000 shares)

Withdrawn
June 29, 1938

Withdrawn
June 29, 1938

Reduction to 100,000 Shares total/June 29, 1940

40000 shares certificates Nr. 4-7. SOPADEP

60000 shares certificates Nr. 1-3 INDUSTRIE BANK

Re: d

The 210,000 original shares only 20 percent paid up were in possession of a consortium close to I. G. Chemie/I. G. Farben until the withdrawal of these shares in 1938.

Re: b

The number of fully paid original shares (130,000) which remained unchanged until 1940 was, according to the lists found in Greutert & Co./Sturzenegger & Co., in the following hands:

1764 *1932:* 74,290 American I. G. Chemical Corp.
20,850 Norsk Hydro
27,429 Sekretariat "B"
57,724 Igesol Konsortium

1933: In contrast to the previous year it should be noted that the
57,724 shares in the hands of the Igesol-Konsortium as well as the
27,429 shares held by Sekretariat "B" were distributed as follows:
28,862 shares Sekretariat "B"
28,862 " Solvay & Co.
26,612 " Sekretariat "C"

1934: The most important parcels of the full I. G. Chemie shares were in possession of the following:
74,290 American I. G. Chemical Corp.
20,859 Norsk Hydro
26,612 Sekretariat "B"
28,852 Fiduziar-Gesellschaft
28,862 Solvay & Co.

1936: The list in question only gave information concerning 89,336 shares. In other words Greutert & Co. could not obtain information concerning the distribution of the rest of the shares at that time. The most important owners were then:
63,800 American I. G. Chemical Corp.
20,850 Norsk Hydro
2,018 Nostro (from stock exchange repurchases)

1937: The main owners of fully paid up shares were:
58,800 American I. G. Ch. C.
20,850 Norsk Hydro
6,595 Nostro (from stock exchange repurchases)

1938: 56,300 American I. G. Chemical Corp.
11,663 Nostro Ownership (from stock exchange repurchases)

1939: 56,300 American I. G. Chemical Corp.
13,385 Nostro Ownership (from stock exchange repurchases) (plus Norsk Hydro about 20,000 shares)

In explanation, (it should be noted: With respect to the fully paid up I. G. Chemie shares during the first years after their issue, it might appear strange that according to the above tables sometimes more shares were shown than were actually issued. This is only in connection with a technical manipulation of Greutert & Co. and has no bearing upon the judgment of the ownership problems here under question.)

1765 *Re: c*

The most important parcels of the 160,000 I. G. Chemie shares 50 percent fully paid up which existed until 1940 could be traced as follows:

1932: 80,000 Shares I. G. Chemical Corp.
10,666 " Igesol Konsortium

1933: 18,197 Sekretariat "A"
11,912 " "B"
15,682 Fiduziar-Gesellschaft
92,947 Contents in Safe
4,492 Deutsche Landerbank A. G.
89 Eidgenossische Bank A. G. Basel
85 Georg Hauck & Sohn
43 Credit Suisse Basel
6 Metallgesellschaft A. G.

1938: 1,519 Heinz Bueb-Stiftung
2,918 Solvay & Co.
28,600 American I. G. Chemical Corp.
2,000 Special Depot Greutert
25,414 Deutsche Landerbank
7,550 Heydt Kontor B
1,900 Eugen Schuon
8,346 Nostro-Ownership Bank Greutert

1939: A transfer of the most important parcels of half I. G. Chemie shares (50 percent paid up) did not occur according to the list of Greutert & Co.

From the above it may be seen that the majority of I. G. Chemie shares was until 1940 in possession of friendly firms, consortiums, etc., of the I. G. Chemie circle or the I. G. Farben circle, and could always be controlled by Greutert & Co. The files however prove that efforts were already made very early to distribute the I. G. Chemie shares to a larger public; these efforts would partially produce the desired results in the course of the years. The coupon redemptions for the dividends for 1938-1939 (to be redeemed in 1939-1940) also gave important information concerning the ownership of the half and full I. G. Chemie shares (the course of the preferred shares as well as of the original shares which were only 20 percent paid up has been clearly indicated in the above lists.)

1766

	Dividends in 1938			Dividends in 1939		
Place of Payment	number of shares	%	%	number of shares	%	%
Large Swiss banks	39,595	13.3	13.1	75,464	31.4	30.1
Greutert & Co., Basel	185,593	62.4	61.9	65,197	27.1	26.1
Holland	5,084	1.7	1.7			
Germany	47,833	16.1	15.9	47,926	20.0	19.2
USA				44,900	18.7	18.0
Various	19,334	6.5	6.5	6,690	2.8	2.7
Total Payments	297,239	100.0	99.1	240,177	100.0	96.1
Total coupons to be cashed in	300,000		100.0	300,000		100.0
				./. 60,000 unpaid coupons from shares withdrawn		

The influential persons of I. G. Chemie were until 1939 the gentlemen of the I. G. Farben, namely Geheimrat Schmitz, C. Roesch, besides Mr. Ed. Greutert, Basel. The present directors of the firm do not deny this fact. How-

ever, they emphasize (and the revisors could convince themselves of this fact from various minutes of the Board of Directors) that above all Mr. Greutert, who died in 1940, and also Dr. Iselin, Standerat Keller, Germann and Dr. Sturzenegger early tried to ward off this German influence in the business of I. G. Chemie, and even before 1940 could gain several successes in this direction. The Board of Directors of I. G. Chemie was composed as follows:

1928: Geh. Kommerzienrat Dr. Hermann Schmitz, Frankfurt, Bank Director, August Germann, Zurich; Ed. Greutert, Basel.

1930: President: Dr. Schmitz, Ludwigshafen; Dr. Fritz Fleiner, University Professor, Zurich; Aug. Germann, Bank Director, Zurich; Ed. Greutert, Banker, Zurich; Dr. Felix Iselin, Basel; Carl Roesch, member of the direction of I. G. Farben A. G., Frankfurt.

1936: Dr. Albert Gadow, Basel, is accepted as new member.

1938: New member: Dr. Gottfr. Keller, Aarau.

1939: The death of Mr. Greutert, Basel, eliminates him from the Board of Directors.

1940: Resignation of Dr. Hermann Schmitz, Ludwigshafen. New member, Dr. H. Sturzenegger, Basel.

1941: The death of Carl Roesch, Basel, in January 1941 eliminates him from the Board of Directors.

1767 The business activity of I. G. Chemie between 1929-1940 was limited to the administration of the participations and of the other capital investments. Detailed mention is made below of the participations which for the main part were not greatly changed after 1940. With respect to the option valid until June 1940 (resp. priority purchase right) which provided that I. G. Farben could at any time, against payment of the book value, call in the participations of I. G. Chemie, the investigators would like to say that it seemed necessary to pursue the question of the evaluation of the securities. At this time

it could be determined that the securities figured on the books and balance sheets of I. G. Chemie at the normal corresponding value (even with respect to the tax situation). It is obvious that I. G. Chemie on the other hand made certain reserves on securities and participations which cannot be identified with the book value of the participations. This fact had only an internal character.

The relationship of I. G. Chemie to I. G. Farben was, of course, very close and was best expressed in the dividend guarantee contract which was concluded by the two enterprises in 1929. The main points of this contract provided that I. G. Farben would guarantee for the payment of a dividend on I. G. Chemie shares in the same percentage as the dividends it paid to its own shareholders. For this I. G. Farben received the right, against payment of the book value, to exercise at any time the option on part or all of the securities and other participations. It was stipulated that the option could be repeatedly exercised, that is, that I. G. Farben could upon the basis of this contract repeatedly claim participations which I. G. Chemie had bought up with the part book value from earlier options.

1768 Here is should be mentioned that the SCO in 1939-1940 in connection with an interest transfer had to investigate the relationship of I. G. Chemie to I. G. Farben as well as the distribution of the I. G. Chemie shares. As a result of the lack of sufficient proof for the majority Swiss share participation the transaction made at that time had to be postponed. I. G. Chemie at that time already declared that I. G. Farben was not a shareholder of its company. Large share parcels were, on the other hand, in America, Norway, Holland, Belgium and England.

Concerning the connection at that time between I. G. Chemie and Greutert & Company it could be determined that on December 31, 1933, I. G. Chemie took over from Visca A. G., Schaffhausen the silent participation of the latter company in Greutert & Company, nominal value francs 4.7 million. As a result of repayments this silent

participation was successively reduced; as of December 31, 1945 it amounted only to 1.5 million francs. Aside from this direct participation the current transactions between I. G. Chemie and Greutert & Company were always pertained only to normal banking transactions.

III. *Negotiations concerning the separation in 1940 and its execution.*

The first signs of the efforts of I. G. Chemie to disengage from the dividend guarantee contract which represented the actual direct tie with I. G. Farben were to be noted already in 1937.

The I. G. Chemie protocol of the Board of Directors of March 18, 1937, reads as follows in this connection:

"The rigid tie of I. G. Chemie dividends to I. G. Farben dividends was unfortunately, in connection with the German foreign exchange laws and the resultant clearing situation, little advantageous to the reputation of the I. G. Chemie shares and the direction must, therefore, make every effort to develop the I. G. Chemie shares to a really respected investment paper here and abroad through a dividend policy which should be as stable as possible. This, however, can, under the present conditions which will probably last for some time, be brought about only through a separation of the I. G. Chemie *dividends* from
1769 the I. G. Farben *dividends*. If the people see that I. G. Chemie actually distributes the net profit which it itself has earned, and if the public no longer needs to fear that this profit would be paid into the supplementary dividend funds only because I. G. Farben for some reason did not distribute a dividend, the necessary confidence in the shares will certainly be revived. At no time, however, was the situation for such an act on the part of I. G. Chemie more favorable than now. This not only because I. G. Chemie would enter into transactions and renounce any advantages legally coming to it, but also because I. G. Farben must more than ever be concerned that the I. G. Chemie shares develop as mentioned above. Under these circumstances the Board of Directors feels

that it cannot now be guided by purely legal considerations with regard to the dividends which are now due but is rather convinced that these legal considerations should be subjected to a fair appropriateness. It supposes that I. G. Farben also recognized the impossibility of the present situation. Thus it charges the committee of the Board of Directors to continue, after the general meeting, the negotiations with I. G. Farben with a view toward changing the dividend guarantee contract."

After very tedious negotiations, the contents of which may be seen in the numerous files and protocols, a transition stage came about in 1938 which consisted of an agreement based upon the dividend guarantee contract, according to which I. G. Farben was granted a prior purchase right to the chief participations (American I. G. Chemical Corp./ Norsk Hydro/Durand & Hugenin, Basel.) I. G. Farben actually strongly opposed a complete dissolution of the dividend guarantee contract. The motives for the dissolution of the contract had on the one hand their basis in the general currency development (German foreign exchange law, devaluation of the Swiss franc) and the resulting fluctuations in the purchasing power through which the practical manipulation of the dividend guarantee had become very difficult. In other words, there was at that time no longer any good nor with the help of which the dividend of I. G. Chemie could be coordinated with the dividend of I. G. Farben. Furthermore, the contract had become one-sided in its effect because I. G. Chemie, Basel, was for its part obliged to sell its participation at any time against their book value to I. G. Farben, but on the other hand could no longer count on the effective guarantee of the dividends as a result of the German foreign
1770 exchange laws. The third motive for insisting on the dissolution of the dividend guarantee contract was for Basel the concern for its American participation, for I. G. Chemie had to fear that the American authorities would see in the dividend guarantee contract an extremely strong tie with I. G. Farben and that its possession in

America would for this reason probably be considered enemy property.

Only through repeated references to these conditions and continued insistence on the part of I. G. Chemie as well as of the gentlemen of General Aniline & Film Corporation, New York, (formerly the American I. G. Chemical Corp.), I. G. Farben finally agreed to the dissolution of the contract which was no longer capable of being fulfilled in all its parts as a result of the German foreign exchange laws.

The protocol of the Board of Directors of June 10, 1940, mentioned in this respect the following:

> "The Board of Directors accepts a report concerning the final negotiations about the dissolution of the dividend guarantee contract which were carried on between June 3 and 6 of the present year with the representatives of the I. G. Farbenindustrie AG., Frankfurt, Director Dr. Kurt Krueger and Prokurist Attorney Hanns Gierlichs, and affirmatively acknowledges the following copy of a letter from I. G. Farbenindustrie AG., Frankfurt, to our company dated June 6, 1940:
>
> "We refer to the negotiations carried on in the last weeks and to our telegram of May 17, 1940, and permit ourselves to confirm to you the agreements made, as follows:
>
> "We sell to you 50,000 shares 50 percent paid up of your company with coupons No. 11 and following from German ownership against payment of 10,000 francs in free foreign exchange outside the frame of the German/Swiss clearing and against delivery of nominal RM 2,100,000 shares of Westfalien-Anhalt Explosives AG., Chemical Factories and nominal RM 500,000 3 percent bonds (teilschuldverschreibungen) of the conversion loan for German foreign debts drawn up in reichsmarks."

The technical execution of the transaction was so carried out that both parties deposited their obligations in a Swiss bank whereupon the bank in turn attended to the transfer of the deposits. The letter of June 6, 1940, which I. G.

Farben wrote in this connection to I. G. Chemie further mentions the following:

1771

"It is further agreed that the so-called dividend guarantee contract which was concluded between our two firms in 1929 and which had been modified since then is to be immediately dissolved in all its parts, without reservations."

The investigators of the Swiss Compensation Office were able to convince themselves of the execution of the transaction and above all of the nullification of the 50,000 shares of I. G. Chemie, 50 percent paid up, which returned from German possession. The approval by the German authorities which was necessary for the dissolution of the contract was obtained at that time.

IV. *Situation since 1940*

With the dissolution of the dividend guarantee contract in the year 1940 the connection between I. G. Chemie and I. G. Farbenindustrie was broken. After 1940 the two firms of course did correspond concerning the following: Norsk Hydro, Oslo/Parta S. A., Lausanne/Maatschappij vor Ind. & Handelsbelangen, Amsterdam/Plaskon Participation USA; however, these matters chiefly concerned sums resulting from liquidation. With respect to the telephone and telegram exchanges, the investigations showed that in 1940/41 and to a lesser extent in 1942 a certain exchange did take place. However, it also seems, although exact proof is not available, to have concerned matters of liquidation.

From 1940 on the direction of I. G. Chemie lay in the hands of the following Directors:

Dr. F. Iselin, Basel
Dr. A. Gadow, Basel
Dir. Aug. Germann, Zurich
Dr. G. Keller, Aarau
Dr. H. Sturzenegger, Basel

Since then the following have resigned: Dr. G. Keller, Aarau (1944); and Dr. A. Gadow, Basel (December 1945); while the following have been newly selected: Dr. Ch. Thormann, Bern; Dr. A. Keller, Brugg; and Ch. Rudolph, Zurich.

1772 With the resignation of Dr. Gadow the last German left the Board of Directors; it should be mentioned that since 1940 he stood alone as the sole German with his vote on the 5-man Board of Directors against the Swiss members. In resumé, concerning the direction of I. G. Chemie since 1939, it may be noted that in Basel among the documents investigated there existed none which would suggest any direct influence of I. G. Farbenindustrie on I. G. Chemie. Several files did point out that in 1940/41 various gentlemen of the I. G. Farben circle spoke with members of I. G. Chemie; however, these visits were still made in connection with the execution of the dissolution of the dividend guarantee contract and can in no way be regarded as an effort to influence the Swiss gentlemen of I. G. Chemie.

1773 The gentlemen of the Board of Directors of I. G. Chemie made no more visits to Germany since the separation.

The relationship of I. G. Chemie to the General Aniline & Film Corporation, New York, which it controls, shows from 1940 on above all the efforts of the Basel firm to exercise an authoritative influence on the Board of the General Aniline & Film Corporation and on its financial transactions; this was also the case before 1940. The measures of the American authorities, however, set limits to the efforts of the I. G. Chemie so that from 1942 on the gentlemen of I. G. Chemie could chiefly concentrate only on the defense of their American possessions. I. G. Chemie concerned itself with the purely economic interests of the General Aniline & Film Corporation only in so far as it may have influenced the status of the finances and participations.

The amount and valuation of the American participations may be seen from the separate table annexed to this resumé. This same table gives information concerning the other participations of I. G. Chemie as of December 12, 1945.

Concerning the distribution of the I. G. Chemie shares since 1939, the following should be mentioned. The total issue amounted to:

				Fr.		Fr.				Fr.
100000	Preferred shares	Nominal value	100	=	10,000,000	20% paid up	=			2,000,000
140000	Original shares	Nominal value	500	=	70,000,000	100% paid up	=			70,000,000
110000	Original shares	Nominal value	500	=	55,000,000	50% paid up	=			27,500,000
350000	Shares and Votes			=	Fr. 135,000,000	paid up	Fr.			99,500,000

The preferred shares of I. G. Chemie, Basel, have since 1940 been clearly in the hands of Swiss companies whose shareholders are Swiss. In order to assure the continuity of the Swiss possession of these companies which control the

1774 preferred share capital of I. G. Chemie, their shareholders are integrated through options into a circle of various companies: see enclosure to this resume.

The original capital, with respect to the votes, stands in the relationship of 250,000 to 100,000 to the preferred share capital. As far as may be determined, the original shares of I. G. Chemie are in the possession of the following firms and persons:

84,900	shares	deposited with General Aniline & Film Corporation, New York
22,100	"	deposited with Norsk Hydro, Oslo
38,000	"	(approx.) in possession of German firms and persons (deposited in Germany)
5,000	"	(approx.) in England (shareholders of English nationality)
4,000	"	in Holland (600 shareholders are of Dutch nationality)
3,300	"	in Belgium (shareholders of Belgian nationality)
1,000	"	in France
6,000	"	distributed among other countries (with the exception of Germany and the countries mentioned above)
73,000	"	in Switzerland, about 1500 shareholders (these almost without exception in the possession of Swiss companies and persons, some of whom, however, are close to the I. G. Chemie circle)
12,700	"	about which information is not available
250,000	shares	Total

V. *Facts which may be held against the attitude of I. G. Chemie, Basel:*

The fact that in 1928 I. G. Chemie was founded by I. G. Farbenindustrie for the purpose of administrating the latter's foreign participations and that until the separation the German gentlemen exercised considerable influence upon the business of I. G. Chemie, and that, furthermore, on the Board of Directors of I. G. Chemie—forming, however, a voting

1775 minority—one member of German nationality (Dr. Gadow) (brother-in-law of Mr. Schmitz), remained until 1945, who had come in 1931 to I. G. Chemie (at that time as Secretary, but voted into the Board of Directors of I. G. Chemie in 1936), had always been a considerable burden to the company. On the other hand, it might be mentioned in this respect that both the deceased Mr. Greutert, as well as the Swiss Gentlemen presently on the direction

successfully tried to strengthen their position and, from 1940 on, to eliminate any German influence. I. G. Farbenindustrie corresponded directly with I. G. Chemie after 1940 in the following matters:

Norsk Hydro, Oslo. At the time of the issuing of new shares (junge Aktien), I. G. Farbenindustrie and I. G. Chemie discussed in 1941 the procedure to be taken with respect to the subscription of the shares as well as the credits to be negotiated by I. G. Farbenindustrie in this respect for I. G. Chemie. It must also be remembered that at that time the intervention of I. G. Farbenindustrie for I. G. Chemie offered definite advantages since the execution of the transactions in Oslo had to be approved by the competent authorities in Berlin anyhow (German occupation of Norway). It is perfectly understandable that I. G. Chemie made use of the services of I. G. Farbenindustrie, Berlin, with which it was formerly allied.

Parta S. A., Lausanne. I. G. Farbenindustrie Leverkusen in 1943 gave Parta S. A., which for its part at that time still belonged to Osmon AG., Schaffhausen (controlled by I. G. Chemie, Basel) directions concerning the management of its business.

It should be noted in this connection that Dr. Gadow in the capacity of emissary of Osmon-Werke A. G. in the year

1776

1944 provided for the disposal of Parta SA.

The gentlemen in Basel did not wish to entertain business relations with any firm which in any way was still connected with a German firm, even if this connection were only economic.

Maatschappij vor Ind. & Handelsbelangen, Amsterdam. In 1940 and 1941 the gentlemen of I. G. Farbenindustrie concerned themselves with the transactions of this company which for its part was held by Osmon A. G. Schaffhausen (owned by I. G. Chemie).

The correspondence and conversations concerned were only the result of the liquidation transactions in connection with the dissolution of the dividend guarantee contract.

Plaskon Co. Inc. NY (USA).

I. G. Farbenindustrie, I. G. Chemie and the New York gentlemen carried on transactions in 1941 concerning this sub-participation of General Aniline & Film Corporation, New York. This was also a case of a liquidation measure.

The investigation of the ownership of the preferred shares of I. G. Chemie shows that the present owners are companies which were very close to I. G. Chemie and part of which are still connected with I. G. Chemie either directly or indirectly. According to the statements of the gentlemen of I. G. Chemie this is due to the fact that an effort had always been made to watch over the shares as much as possible (indeed, this is the effort of every board of directors) in order to avoid the appearance of undesired large shareholders (for example, the transfer of shares to German shareholders). Of the 73,000 Swiss-owned shares, from a total of 250,000 original

1777 shares, approximately one half are in the hands of companies and persons close to I. G. Chemie, the other half are divided among the public. It may be seen from various files that between General Aniline and Film Corporation, New York and I. G. Farbenindustrie A. G., Berlin, there exist several direct contracts concerning manufacturing methods, patents, etc.

The competent gentlemen in Basel know that contractual agreements between I. G. Farbenindustrie and General Aniline & Film Corporation exist or have existed concerning these technical matters. The details of these agreements, especially also the contents of these contracts are not known and Basel never re-

ceived copies of the contracts or any similar documents. The gentlemen of the Board of Directors of I. G. Chemie expressly point out that the agreements mentioned are of a technical nature and did not concern I. G. Chemie, since the latter, as a holding company, was concerned mainly with the financial administration of its participations.

Ed. Greutert & Co./H. Sturzenegger & Co., a banking house very close to I. G. Chemie, could be reproached for undertaking comprehensive transactions for I. G. Farbenindustrie and its German affiliated companies after 1940. However, the business transactions concerned developed within the frame of the normal business activities of a bank, and it is furthermore to be noted that I. G. Farbenindustrie also entrusted other Swiss banks with a part of its financial operations.

1778 IV. *The facts which support the view of I. G. Chemie/Interhandel AG., Basel.*

The statements of the gentlemen of I. G. Chemie according to which they had been trying long before 1940 to dissolve the dividend guarantee contract with I. G. Farben are correct. From 1937 until 1940 the gentlemen in Basel were trying, as might be seen in the investigated protocols of the Board of Directors, to eliminate the German influence and above all to nullify the contract which was one-sided in its effect and was hindering the freedom of action of I. G. Chemie. Participating in the negotiations at that time as well as in the final execution were the gentlemen of the Board of Directors of I. G. Chemie, various representatives of I. G. Farben, as well as Messrs. Williamson, Dr. Aickelin, D. A. Schmitz, Dr. W. Duisberg, representing the General Aniline & Film Corporation, New York. From the files it may be seen that the gentlemen did not always agree upon the method of the final settlement and that I. G. Chemie sometimes had difficulty in having its point of view accepted.

The final settlement with respect to the dissolution of the dividend guarantee contract has already been discussed above. It should only be mentioned that the investigators of the SCO saw no documents which could in any way prove that the dissolution of the contract was purely fictitious or that it was replaced by any obligations, gentlemen's agreements, etc. As mentioned above, a break—except for several liquidation matters—of the fines between I. G. Farben and I. G. Chemie was confirmed. A separation in a certain sense also was obtained with respect to personnel. The Board of Directors of I. G. Chemie consists today solely of Swiss personalities since the resignation of Dr. Gadow (German citizen) at the end of 1945 as a member of the Board of Directors and Manager.

1779 The securities portfolio of I. G. Chemie contains only very minor quantities of German securities. The actual participations are in an American and a Norwegian enterprise. Furthermore, with respect to the influence upon the business of those companies in which I. G. Chemie possesses the majority shares, it is to be mentioned that I. G. Chemie largely influenced the financial transactions and the administration of the companies concerned. If in the case of the General Aniline & Film Corporation the administrative control was not so strong as would normally be expected from a parent company, this is due, according to the statements of the gentlemen of I. G. Chemie, to the fact that as a result of the war the connection left much to be desired, the Americans placed difficulties in the way, and further, that the gentlemen of General Aniline & Film Corporation had long been managers of the enterprise concerned who did not have to accept instructions in all details and enjoyed great confidence from the gentlemen of I. G. Chemie.

Considering the share capital of I. G. Chemie, it should be mentioned that only a relatively small percentage now lies in German hands. By far the greatest part lies in the hands of the GAF, New York, of Swiss companies and persons, and to a lesser extent of Norsk Hydro, Oslo.

With respect to the question whether I. G. Chemie, Basel (or Interhandel) must be subjected to the decrees of the Federal Council of February 16 and April 27, 1945 (blocking of German assets), it must be pointed out that formally as of February 16, 1945, the situation at I. G. Chemie was such that no justification for subjection to the said decrees of the Federal Council can be deduced therefrom, that is, the dividend guarantee contract with I. G. Farben was definitely dissolved, the ties to the I. G. Farben concern no longer existed, and, as already

1780 mentioned, the share capital was largely in the hands of the Swiss, American and Norwegian firms or persons. There also exist no documents which would suggest the existence of gentlemen's agreements, personal oral promises, option contracts, etc. The gentlemen of the Board of Directors of I. G. Chemie as well as the Board of Directors of those companies which have the preferred share capital of I. G. Chemie in their portfolio, individually made to the SCO a declaration which was formulated by the latter office with the greatest ease and precision, according to which no agreements or promises of any kind exist which would create a situation to which the decrees of the Federal Council of February 16, April 27, and May 29, 1945, concerning the blocking of payments and the obligatory declaration of German assets could be applied. The gentlemen concerned, some of whom enjoy an extremely good reputation in the Swiss financial world, were especially informed that they must reckon with the discovery of incriminating material by the Allied authorities if, in spite of their declaration, such material should exist. Furthermore, the penalties contained in the said decrees of the Federal Council were mentioned. The gentlemen in question would certainly not have been ready to sign such far-reaching declarations if they had not been convinced of the statements to which they signed their names.

1781 LIST OF THE PERSONS INTERVIEWED IN CONNECTION WITH THE INVESTIGATIONS OF I. G. CHEMIE, BASEL/H. STURZENEGGER & Co., BASEL.

Dr. F. Iselin, Basel	President of the Board of Directors of I. G. Chemie
Dr. H. Sturzenegger, Binningen	Member of the Board of Directors of I. G. Chemie
Mr. C. Mollwo, Lausanne	Formerly in the firm Greutert & Co., Basel, now on the Boards of Directors of various affiliated companies, especially of Sopadep, S. A. Lausanne
Dr. A. Gadow, Basel	On the Board of Directors of I. G. Chemie, Basel, until the end of 1945
Dr. Henggeler, Zurich	Or his deputy Dr. Blatter of Nutra Treuhand A. G., Zurich
Dr. C. Du Bois, Peseux	Participates in the companies which controlled the preferred share capital of I. G. Chemie
Dr. W. Germann, Basel	Director of I. G. Chemie
Mr. Hans Haller, Binningen	Former proxy of Greutert & Co., now participant in companies which control the preferred share capital of I. G. Chemie
Mr. Sutter, Basel	Proxy of the bank Sturzenegger & Co., Basel, and participant in companies which control preferred share capital of I. G. Chemie
Mr. Werder, Basel	DITTO

Dir. Wolfensperger, Zurich	Participator in Industriebank A. G., Zurich, which is connected with I. G. Chemie and H. Sturzenegger & Co.
Mr. J. Bischoff, Lausanne	Proxy of SOPADER S. A., Lausanne

Furthermore, the connections of the following persons with I. G. Chemie, Basel, or to Greutert & Co., Basel/Sturzenegger & Co., Basel, were investigated.

Mr. F. Brunni, Basel	From 1936 to 1945 proxy of I. G. Chemie Basel
Dr. Schmitz, Frankfurt	President of the Board of Directors of I. G. Chemie from 1928 to 1940
Dr. A. Germann, Zurich	Member of the Board of Directors of I. G. Chemie from 1928 until today
1782 Dr. Ed. Greutert, Basel	DITTO 1928-1939
Mr. C. Roesch, Basel	Member of the Board of Directors of I. G. Chemie until January, 1941
Mr. R. Euler and Mr. A. Merton, Frankfurt	Sleeping partners of the bank Greutert & Co., Basel, from 1920 to 1931
Dr. Thormann, Bern	Member of the Board of Directors of I. G. Chemie since 1945

Lists of the Safes (Bankschliessfacher)

A list of the safes investigated in connection with the investigation of I. G. Chemie, Basel/Sturzenegger & Co., Basel.

All firms and persons, which in the course of the investigations were mentioned were investigated for the existence of any safes. The SCO also submitted to the large Swiss banks lists of the persons and firms in question and instructed these banks to block any safes and to await the arrival of the investigating officials. After these preparatory measures the contents of the following safes were investigated:

Dr. Felix Iselin, Basel
Dr. Sturzenegger, Binningen
Dr. G. Schudel, Zurich (brother of Dr. Schudel, Schaffhausen, who appeared in connection with Osmon A. G., Schaffhausen which belongs to I. G. Chemie)
Dir. W. Germann, Basel (Director of I. G. Chemie).
Dr. Henggeler, Zurich, upon several occasions legal advisor for I. G. Chemie
Neftra A. G., Zurich/Bern—Control Office
Mr. C. Mollwo, Lausanne—Member of the Boards of Directors of various affiliated companies.

It should also be mentioned that on the premises of all firms and persons investigated the contents of any steel safes and vaults present were investigated.

1783 List of the Firms Inspected in Connection with I. G. Chemie, Basel/H. Sturzenegger & Co., Basel:

Agfa A. G., Zurich
Bank fur Industrielle-Unternehmungen, Schaffhausen
Chemica A. G., Schaffhausen
Continentale-Linoleum-Union A. G., Zurich
Continentale Gesellschaft fur angewandte Elektrizitat, A. G., Basel

Durand & Huguenin, Basel
Fiduziar A. G., Schaffhausen
Grutchemie-Konsortium, Basel
Helico S. A., Neuchatel
Immobiliengesellschaft Maienburg A. G., Zurich

Iggesel-Konsortium, Basel
I. G. Stickstoff A. G., Basel
Immobiliar A. G., St. Jakob, Basel
Industriebank A. G., Zurich
Maria-Stiftung, Basel
Michelangelo-Stiftung, Basel
Raphael-Stiftung, Basel
Matua-Stiftung, Chur
Mitlras A. G., Schaffhausen
Osmon A. G., Schaffhausen

Parta S. A., Lausanne
Peak-Film, Zurich
Perpetua A. G., Schaffhausen
Petropol A. G., Basel
Pro Sorore-Stiftung, Chur

Providentia, A. G., Schaffhausen
Prudentia-Stiftung, Basel
Rex-Film/Gloria-Film A. G./Bellerive-Filmverleih, Zurich
Rigidor, A. G., Bern
Rotopulsor A. G., Schaffhausen

Rohner A. G., Pratteln
Sopadep S. A., Lausanne
Schweiz. Ges. f. Metallwerte, Basel
Technik & Finanz A. G., Basel
Teerfarben A. G., Zurich

Traversina/Traversa A. G., Zurich
Treupha A. G., Basel
Visca A. G., Schaffhausen
Agfa Ansco-Corp., Binghamton, N. Y.
American I. G. Chemical Corp./General Aniline & Film Corp., New York

Synthetic Nitrogen Products Corp., New York
North American Industries Ltd., Montreal

L. D. Pickering & Co., New York
Spicca A. G., Schaffhausen
Plaskon Co., Inc., New York

1784 N. V. Chehamij, Amsterdam
Chemo N. V., Amsterdam
N. V. Defa, Amsterdam
N. V. Delta, Rotterdam
Mapro N. V., Amsterdam

N. V. poor Industrie/N. V. Newo/N. V. Delft/Amsterdam
S. A. Saania, Paris
N. V. Montana Metaalhandel, Amsterdam
N. V. Chemische Maatschappij Nipropan, Amsterdam
N. V. Chemische Maatschappij Nipropan, Amsterdam
"Athanil" Farben—und Chemikalien Handels A. G., Athen

Budanil Farbenverkaufs-A. F., Budapest
Deutsche Landerbank A. G., Berlin
International Co., Berlin
Internasjonalt Kvelstoffaksjeselskap, Oslo
Kommerz-Anstalt, Vaduz
Metallgesellschaft A. G., Frankfurt

Norsk Hydro, Oslo
"Opiag" A. G., Wien
"Romanil" A. G., Bukarest
Societe Commerciale et Chimique, Paris
Solvay & Cie, C. G., Bruxelles
Societe des Establissements Chmiques de Winnica, Warschau

The above companies, consortiums and foundations are partly directly connected with I. G. Chemie or with H. Sturzenegger & Co., Basel, and their correspondence and books could be inspected either in Basel or at the domicile of the company. The other firms are those whose relationship to I. G. Chemie, Basel, or to H. Sturzenegger & Co., Basel, was only inspected with the help of the correspondence and books present on the premises of the latter two

firms (mainly foreign firms whose files and books are not deposited in Switzerland).

1785 Portfolio of the I. G. Chemie, Basle

Shares	Nos.	Place of deposit		Francs
Schweiz. Bankverein	700	Hastur		224,754.05
Schweiz. Kreditanstalt	2700	"		956,186.05
Elektrobank	600	"		218,100.85
Conti Linoleum	301	"		37,214.20
SAEG	837	"		83,721.—
Sastig	100	"		50,934.70
Accumulatoren Oerlikon	10	"		3,650.—
Saurer Arbon	30	"		14,720.35
Aluminiumind.	215	"		390,000.—
Bally	50	"		40,551.70
BBC	65	"		32,636.70
Fischer Stahl	110	"		55,789.—
Ciba	10	"		46,420.—
Ind. Gas. f. Schappe	60	"		46,200.—
Kraftwerk Laufenburg	145	"		72,945.50
Linoleum Giubiasco	326	"		30,648.60
Lonza	400	"		282,076.90
Ditto bonus certificates	400	"		37,319.—
Machine Factory Oerlikon	100	"		35,825.35
Basle Fire Insurance	14	"		10,024.85
Reinsurance	35	"		34,284.20
Accident Insurance Winterthur	3	"		10,080.—
I.G. Stickstoff	3662	"	(3642)*	183,100.—
Osmon	4000	"	(3960)**	1,810,178.50
Participation Sturzenegger	—	—		1,250,000.—
GAF A-shares ($75/4.23)	455624	†		144,546,714.—
" B-shares ($1.77/4.23)	2050000	‡		6,677,055.—
Norsk Hydro (Kr. 247.79/ 22.40/Fr. 25.50)	85681	Hastur		4,755,736.—
Degussa (nom. RM. 1613000)		"		80,650.—
Deutsche Laenderbank (nom. RM. 3000000)		"		120,000.—
Vereinigte Towfabr. pref. shares (fl. 40500)		"		1.—
" " common " (fl. 7425)		"		1.—
				162,137,468.50
Swiss Bonds				21,851,913.25
				183,989,381.75

* 20 or ** 40 = Qualifying shares.
† 300,000 in own safe deposit with Hastur / 155,624 with Hastur.
‡ For place of deposit see section "Amgeiem/GAF".

Sturzenegger & Cie. (formerly Greutert)

B a s l e

Dr. Sturzenegger Unlimited Partner
Limited partnerships of the Industriebank A.G.
Silent partnership of I.G. Chemie

Controls by means of shares Perpetua A.G., Lucerne

Industriebank A.G., Zurich

Perpetua A.G., Lucerne

Controls 60% of the preferred share capital of I.G. Chemie, Basle
Possesses 6032 original shares of the I.G. Chemie, Basle
Possesses limited partnership in Sturzenegger & Cie., Basle

Possesses option right in case of death and right of first refusal to the share parcels of the Rigidor shareholders.
Possesses option right in case of death and right of first refusal to the share parcels of the Sopadep shareholders.

Rigidor A.G., Berne

Sopadep S.A., Lausanne

Holder of option for the Industriebank-shares as trustee (right of first refusal)
Shareholders bound by option to Perpetua A.G. in case of death.

Possesses 40% of the preferred shares of the I.G. Chemie
Shareholders bound by option to Perpetua A.G. in case of death.

Owners of "B" Shares
(in millions of pieces)

As of	Chemo Mij.	I. G. Chemie	Mithras A. G.	With Greutert	Mij. vor Ind. & Handelsbel.	Industrie-bank	Sopadep	Tefiag	Total
21. 6.29				3 I. G. Consortium					3
7.10.29	0.9			2.1					3
14.10.30	0.4	0.2		2.4					3
31.12.30	0.4	0.2		2.4					3
5. 9.33	0.4	0.2		2.4 To Sekretariat Gr.					3
1. 7.33	0.4	0.2	1.25	1.15					3
3.10.33	0.4	0.2	1.25	1.15 Sekr. B.					3
31.12.34	0.4	0.2	1.25	1.15 To Sekretariat					3
2. 4.35	0.6		1.25	1.15					3
20. 8.37	0.6		1.25	0.5	0.65				3
2. 9.37	0.6			1.75	0.65				3
2. 9.37	0.6			1.45	0.95	0.5			3
30.12.37	0.6		0.3	0.65 Nostro	0.95	0.5			3
21. 8.39	0.6		0.3	Syndicate	0.95	0.5	0.65		
31. 8.39	0.6			Participation	0.3	0.5	0.95	0.65	3
28. 9.39	0.6		0.3			0.5	0.95	0.65	3
30. 9.39			0.3	0.2		0.5	0.95	1.05	3
30. 4.40		1.55				0.5	sold to GAF		2.05
29.11.41		2.05							2.05

1788 **Exhibit C. Report of the Swiss Compensation Office.**

[Translated from typewritten copy in German]

SWISS CLEARING OFFICE
DEPARTMENT FOR THE LIQUIDATION
OF GERMAN ASSETS

Remarks on the Memorandum of October 7, 1947, as well as on the letter of October 31, 1947, of the Joint Commission Concerning the I. G. Chemie, Basel (International Industrial and Commercial Participations Company, Basel).

I.

In judging this case as a whole it must always be borne in mind that neither the administrative groups of the I. G. Chemie nor those of the I. G. Farben have ever denied that there was close collaboration between the two firms until the dissolution—that is, the cancellation of the dividend-guarantee agreement of 1940. But the I. G. Chemie takes the stand that in consequence of the cancellation of the dividend-guarantee agreement all connections were dissolved and that there is no longer any control by the I. G. Farben. If this dissolution, which is proved by the agreement of cancellation, is to be refuted, this can be done only by documents referring to the period after June 29, 1940. Documents concerning previous periods cannot be used as proof that a connection still exists today.

In judging documents referring to the period after June 29, 1940, a distinction must also be made as to whether they are documents originating from the I. G. Chemie or whether they are documents originating from the I. G. Farben, particularly memoranda; for petitions of the I. G. Farben to German authorities, in which certain assertions are made or a certain tendency is pursued, cannot in themselves be blamed on the I. G. Chemie unless these petitions

had first been submitted for perusal to the I. G. Chemie by the I. G. Farben.

To be taken into consideration also is that, in view of the previous close connections between the two firms and the great complex of questions and the great extent of the business connections, the liquidation could not be made conclusively from one day to the next, so that certain liquidation activities and already existing assignments of representation (for instance, Romanil, Budanil, Athanil) are also possible subsequently and had to be carried out.

Finally, it is to be taken into consideration that the two firms did not separate because of a quarrel, so that it is not strange if, in one instance or another, they made use of each other's services so far as this was within the scope of normal business relations without domination.

1789 The Clearing Office wishes to emphasize these points once more, since there is danger that a judgment of the case may be influenced by earlier events. The relationship to the main question of the individual points to be put forward must also be made clear. It must not be overlooked that there are a number of incidental points and questions which cannot in any way affect the main problem, the dissolution as such. The Clearing Office is well aware that in view of the extensive complex of facts and questions there is danger of overlooking the main point because of the many small details and incidentals—that is, of obscuring the relationship between the incidentals and the main points, which would be prejudicial to an objective opinion of the case as a whole.

During the discussions at the Clearing Office with the Joint Commission the questions that were brought up refer for the most part to events before 1940. If the Clearing Office answered or clarified all these questions and points as best it could, it did so, of course, with the understanding that these points were not to be made use of in forming an opinion of the dissolution or the connection with the I. G. Farben, which it is asserted still exists today, but only to

serve to make earlier connections clear and understandable to the Joint Commission. In the following statements the Clearing Office nevertheless answers these question in writing and, so far as possible, attaches documentary proof. By this, however, the stand that has been taken on principle, namely, that in forming an opinion of the decisive point only events and documents should be considered that refer to the relationship after the dissolution, has in no way been prejudiced.

The following statements concern individual points and transactions that may be considered a partial supplement to the appeal expose. But the principal question—the question of the separation of the I. G. Chemie from the I. G. Farben and the relationship of control today—is handled only in the appeal exposé. The facts made known and the questions raised by the Joint Commission in its memorandum and in the discussions do not really refer to the main problem and therefore cannot prejudice this problem. The present remarks should therefore be considered detailed statements on earlier connections in the light of the appeal exposé.

II.

So far as the individual questions are concerned the Clearing Office would like to make the following remarks:

1790 *a) Norsk Hydro Capital Increase*

This entire complex of questions has already been examined by the Clearing Office and in the opinion of the Clearing Office gives rise to no particular observations. It should be emphasized that before the capital increase was made the I. G. Chemie gave the American Consulate in Basel exact information at that time on the relationship and the reasons why it wished to participate in the capital increase. The I. G. Chemie did not succeed in obtaining any kind of definite expression of opinion on this problem by the American authorities.

In the telephone conversations Dr. Gierlichs had already been delegated to check the question as to whether it was not possible to take up a credit in Norway in order to raise the necessary funds for exercising the subscription right. The credit was then to be repaid by the dividends received and already credited dividends. It is clear that from the very beginning the management of the I. G. Chemie did not wish to make Swiss francs available for exercising the subscription right. Only on June 14, 1941, the I. G. Chemie was informed by the Norwegian banks that they were willing to grant a suitable credit. This willingness to open a credit, however, does not mean that the I. G. Chemie wanted to exercise the subscription right, and still less that the I. G. Chemie has done so. From the willingness to open the credit, therefore, the conclusion should not be drawn that the I. G. Chemie did not sincerely communicate with the American Consulate General in order to answer their letter of June 27, 1941, to clarify the question what objections America could have against the exercise of the subscription right. It should be expressly emphasized that the exercise of the subscription right took place on the last day of the time that had been set—that is, *October 30, 1941.*

The first credit for repayment of the subscription amount was made in October, 1941, i.e., weeks after the relations between I. G. Chemie and the American Consulate General had been taken up. *The assertions made during the discussion at the Clearing Office to the effect that the subscription right had already been exercised before the I. G. Chemie had answered the American Consulate General are therefore not in accordance with the facts.*

From the Minutes of the Board of Directors of the I. G. Chemie of May 19, 1941, it appears with all clarity that the Board of Directors has thoroughly considered the question of the capital increase, and in doing so came to the conclusion that the use of new funds, i.e. Swiss francs, for this capital increase would not be contemplated but that the attempt should be made to use blocked kroner credits in

Norway for this purpose. Also, the sale of the subscription rights in Norway would have been of no value, in the opinion of the Board of Directors, since only blocked kroner credits would have been received. The acquisition of the shares as such was therefore preferable.

1791 Since, according to communications received, foreign firms could exercise the subscription right only against cash foreign exchange, and since the German occupation forces (that is, the German military authorities) were the ones who ultimately decided on those matters, it was clear that the I. G. Chemie tried—since it had no connections to the German authorities—to take the necessary steps and carry out the necessary negotiations in Norway through Dr. Hans Gierlichs, *Prokurist* [person authorized to sign] of the I. G. Farben. The I. G. Chemie commissioned not the I. G. Farben, but Dr. Hans Gierlichs, attorney, personally. This is evident *from his letter of January 14, 1942*, to the I. G. Chemie in which he expressly states: "With reference to the commission that has been given me. . . ."

The I. G. Chemie has no knowledge whatever of the memos attached to the allied memorandum; it is not clear from them where these memos originated. Furthermore, the I. G. Chemie denies most emphatically that it had anything to do with the assertions contained therein or that it had any idea of the letter from the I. G. Farben of December 19, 1941, to *Ministerialdirigent* [title] Landwehr. The assertions about being on good terms were undoubtedly made by the I. G. Farben for the good of the cause, in order to be able to induce the German authorities to pass an exceptional decision in favor of the I. G. Chemie.

So far as the reference on page 2 of the letter of December 19, 1941, from the I. G. Farben about connections with America is concerned, this will be referred to later on in another connection.

With the help of Dr. Hans Gierlichs it was possible to get the credits. The difficulties then revealed themselves

in repaying the credit, because the German authorities suddenly wished to refuse the use of the blocked accounts. In order to avoid all these difficulties, the I. G. Chemie then finally sold a portion of the new shares and used the purchase price to repay the credit (cf. *letter of August 14, 1942, from the I. G. Chemie to Norsk Hydro*).

In view of the interest of the I. G. Chemie in being able to exercise the valuable subscription right in connection with the Norsk Hydro capital increase without having to use Swiss francs, it is understandable that the I. G. Chemie requested the mediation of Dr. Hans Gierlichs in order to obtain the necessary exceptional approvals which would make possible the use of blocked Norwegian credits for covering the price of the shares. With its letter of *December 31, 1942*, the Clearing Office gave its permission for the use of the dividends for repayment of the credit.

1792 As far as the *exercise of the voting right* is concerned, the I. G. Chemie always had itself represented not by the I. G. Farben but by Norsk Hydro itself or its directors. Since 1929 the voting right was put at the disposal of Norsk Hydro or Director Axel Aubert. It should be stressed particularly that at the general meeting of June 30, 1941, at which the increase of the share capital was decided upon, the I. G. Chemie was represented not by the I. G. Farben or one of its men but by Mr. Axel Aubert. The I. G. Farben was completely eliminated in later years too. In 1942, the I. G. Chemie even refrained from complying with Norsk Hydro's request that the voting right be transferred. Its shares were not represented. *It is therefore wrong to assume that the I. G. Farben could have had power of disposition, materially or with regard to the voting right, over the Norsk Hydro shares belonging to the I. G. Chemie.* The memo probably written by the I. G. Farben concerning the composition of the share capital, in which the shares belonging to the I. G. Chemie are stated as being a participation belonging to the German combine, is therefore not in accordance with the fact

and is a mere combination of the I. G. Farben. The basis of this attitude was probably the idea that the two concerns did not separate in consequence of a quarrel, so that the I. G. Farben believed that as long as the interests of the shareholders and particularly those of the I. G. Chemie were looked after, the shares of the I. G. Chemie would not vote against proposals of the I. G. Farben.

The Americans further emphasized that the whole matter of the increase of Norsk Hydro's share capital was of particular importance for America, because, as has been proved, Norsk Hydro was to be enlarged for German armament purposes, particularly for research on the atom bomb. No matter how understandable this point of view of America's should be, a neutral company should nevertheless not be blamed for making use of its riglits as a shareholder without knowledge of the particulars of the situation. It would even be wrong for a neutral shareholder to let himself be guided only by political considerations in connection with the question whether a subscription right was to be exercised or not. Moreover, the attitude of Basel with regard to the participations in German armament industries is best evident from the fact that the WASAG shares were disposed of when the separation took place in 1940.

b) Development of the banking house of Sturzenegger & Cie.-Greutert & Cie.

The banking house of Ed. Greutert & Cie. was established in Basel on February 17, 1920; the unlimited partner was the now deceased Ed. Greutert, who was formerly with the

1793 Metallgesellschaft A. G. in Frankfurt, and the limited partners were Messrs. Rudolph Euler and Alfred Merton, both managers of the Metallgesellschaft A. G. in Frankfurt. The investment of the unlimited partner was fr. 50,000.00 and that of the two limited partners was fr. 475,000.00 each, which amounts to a capital of fr. 1,000,000.00. It is evident from a memo that Messrs. Euler

and Merton acted by order and for account of the Metallgesellschaft A. G. in Frankfurt. The management was in the hands of Greutert from the beginning; besides, his friend Carlo Mollwo was with him as *Prokurist* [person authorized to sign]. The connection to I. G. Farben resulted from the personal friendship between Privy Councillor Schmitz and Greutert, who had both worked previously at the Metallgesellschaft A. G. in Frankfurt.

In 1931 Hans Sturzenegger, LL.D., the present unlimited partner, came into the firm; in 1934 he became *Prokurist* [person authorized to sign] and in 1938 co-partner along with Greutert. Since the death of Mr. Greutert he has taken over the firm in the capacity of sole unlimited partner.

In 1923 Greutert increased his investment of fr. 50,000.00 to fr. 200,000.00. When Dr. Sturzenegger came into the firm as co-partner in 1938 he made a capital investment of fr. 100,000.00 which was increased by fr. 200,000.00 in 1940.

The matter of the limited investment developed as follows: The amount of the limited investment of Messrs. Merton and Euler (of the Metallgesellschaft A. G. in Frankfurt and the N. V. Montaan Metaalhandel in Amsterdam) was increased in 1923 from the original fr. 475,000 each to fr. 1,900,000.00 each. In 1931 C. Mollwo then took over as trustee for Visca the limited participation of both Mr. Euler and Mr. Merton, for which the latter two gentlemen received a settlement of 300%. In this transaction the Greutert bank itself took over fr. 4,800,000.00 to its own debit, which were then written off by the end of 1931. Visca had been established in 1924 and was under German control. In 1931 the entire block of shares went over to Ed. Greutert & Cie., to Secretariat B. Although the share capital changed hands a number of times during the course of the years, it always remained in the hands of persons closely connected with the Greutert-I. G. Chemie group. At the time the German shareholders of Visca were compensated by Greutert with transfer of I. G. Chemie

shares in the ratio of 1:10. In 1936-37 the Industrie-Bank then took over the Visca participations of fr. 3,800,000.00 and increased it in 1940 to fr. 4,200,000.00. This limited participation still exists today.

The transfer of the limited participation of Messrs. Euler and Merton (that is, the Metallgesellschaft A. G.) to Mollwo (or Visca) was intended as a normal elimination of these men in consequence of the development of the situation.

1794 In 1920 Greutert & Cie. was established with the assistance of the Metallgesellschaft A. G. with the idea that the Metallgesellschaft A. G. could build up a large international business to be managed on neutral territory by a financial institution. During the course of the years, however, it appeared that these expectations were not realized, and that, if the business of Greutert & Cie. had been based to a great extent on the banking transactions of the Metallgesellschaft, there would have been no reason for the existence of Greutert & Cie. As a result of the friendly relations between Greutert and Schmitz, Greutert was successful in maintaining his banking business with business of the I. G. Farben. It was therefore a natural development that the banking business, which actually was to have served the purposes of the Metallgesellschaft in particular but was not necessary to the extent that had been expected, wished to discontinue the participation of the Metallgesellschaft, i.e. that the Metallgesellschaft on its part no longer had an interest in this participation. Its work by no means consisted in the financing of banking transactions. The Metallgesellschaft could therefore be pleased if its limited participations were compensated at 300%. In this connection it should be said that what the Metallgesellschaft had at that time besides the limited participation was not credits with Greutert but a bank debt of over fr. 11,000,000.00. The proceeds from the limited participation served primarily to repay this bank debt or to reduce it.

For the sake of completeness it should also be mentioned that the Industrie-Bank took over at par Visca's participation in Greutert & Cie.

Besides the limited participation there was a silent participation, which developed as follows. In 1926 Visca became a sleeping partner in Greutert & Cie. with an amount of fr. 3,750,000.00. Furthermore, it placed in trust at the disposal of Ed. Greutert an amount of fr. 1,000,000.00, which from 1926 to 1932 was entered by Greutert as his own investment, so that during this time his investment amounted to fr. 1,200,000.00 instead of fr. 200,000.00. At the end of 1933 this participation disappeared, in that the I. G. Chemie took over a silent participation in place of Visca in the amount of fr. 4,750,000.00. Visca was therefore replaced by the I. G. Chemie, and the amount of fr. 1,000,000.00, entered as being held by Greutert in trust, was likewise taken over by the I. G. Chemie. The I. G. Chemie took over this Visca participation only after it had informed the I. G. Farben of its opinion by the *correspondence of May 2nd and 4th, 1933*, that participations in banks did not fall within the scope of the dividend-guarantee agreement and the option right. In the letter of May 4, 1933, the I. G. Farben expressly stated that the option right would not be made use of if the I. G. Chemie participated in a bank. At the end of December 1933, I. G. Chemie thereupon took over the silent

1795 participation. This silent participation of fr. 4,750,000.00 was subsequently reduced at the end of December 1936 to fr. 3,750,000.00; at the end of December 1940 to fr. 3,500,000.00; at the end of December 1943 to fr. 1,500,000.00, and in October 1945 to fr. 1,250,000.00. This is the capital situation of Ed. Greutert & Cie. It is evident that previously the banking house of Greutert & Cie. was entirely German controlled, but that this German control had very early begun to be slowly removed. With the capital compensation of 1936/1937 the German influence was completely done away with economically. Only the following still participate today in Sturzenegger & Cie.

as the successor to Ed. Greutert & Cie: besides Dr. Sturzenegger, the Industrie-Bank A. G., Zurich, as limited partner (the present limited participation fr. 4,200,000.00), and the I. G. Chemie as the sleeping partner (present participation fr. 1,250,000.00).

With regard to the development of the bank it must be said that the capital amounted in 1920 to fr. 1,000,000.00; as early as the end of 1920 to fr. 1,100,000.00; at the end of 1921 to fr. 1,600,000.00; at the end of 1923 to fr. 4,000,000.00; at the end of 1926 to fr. 8,750,000.00; at the end of 1936 to fr. 7,750,000.00 (reduction of the silent participation of the I. G. Chemie); at the end of 1938 to fr. 7,850,000.00 (Dr. Sturzenegger came into the firm with an investment of fr. 100,000.00); at the end of 1940 to fr. 8,000,000.00 (increase of the limited participation of the Industrie-Bank by fr. 400,000.00 and reduction of the silent participation of the I. G. Chemie by fr. 250,000.00), and at the end of 1943 to fr. 6,000,000.00 (reduction of the silent participation of the I. G. Chemie by fr. 2,000,000.00). The balance sheet sum also corresponds to this development. The balance sheet sum amounted in 1920 to fr. 6,700,000.00; in 1922 to fr. 17,300,000.00; in 1923 to fr. 57,600,000.00; in 1924 to fr. 84,000,000.00; in 1925 to fr. 119,000,000.00; in 1926 to fr. 167,900,000.00; in 1927 to fr. 286,700,000.00; in 1928 to fr. 490,000,000.00; in 1929 to fr. 334,500,000.00 (the decline in the balance sheet sum may be connected with the establishment of the I. G. Chemie and the partial transfer of the assets in the I. G. consortium to the new company and the payment of the equivalent to the I. G. Farben); in 1930 to fr. 368,400,000.00; in 1931 to fr. 398,600,000.00; in 1932 to fr. 399,900,000.00; in 1933 to fr. 401,800,000.00; in 1934 to fr. 254,600,000.00; in 1935 to fr. 156,700,000.00; in 1936 to fr. 126,200,000.00 (this reduction is probably connected with the increased severity of the German foreign exchange regulations and the tendency to balance accounts as much as possible); in 1936 to fr. 126,200,000.00; in 1937 to fr. 131,300,000.00; in 1938 to fr. 77,400,000.00 (general compensation with Germany); in 1939 to fr. 67,300,000.00;

in 1940 to fr. 52,200,000.00; in 1941 to fr. 53,600,000.00; in 1942 to fr. 54,300,000.00; in 1943 to fr. 41,100,000.00; in 1944 to fr. 41,000,000.00; in 1945 to fr. 27,400,000.00; and in 1946 to fr. 26,400,000.00. The balances of the accounts payable also correspond to this development. In this connection the classification according to the domicile of the creditors is interesting; for instance, in 1935 the balances of the accounts payable of the creditors domiciled in Germany amounted to fr. 93,400,000.00 and in 1944 only to about fr. 3,500,000.00.

1790 These are the most important data in the development of Ed. Greutert & Cie. and Sturzenegger & Cie. At the end of 1944 the hidden reserves amounted to several millions of francs. The securities belonging to the firm are either in its own safe or deposited with Swiss banks. Only a few German securities are deposited in Germany; among them the only important block is RM 6,500,000.00 shares in the Deutsche Laenderbank. The other German securities are of secondary importance in a total amount of nom. RM 370,000.00.

In brief, it may therefore be said that besides the I. G. Chemie and the Industriebank A. G. only Sturzenegger still participates in the business capital, and that the creditors are for the most part domiciled in Switzerland.

In the memorandum of the Joint Commission it is pointed out among other things that Sturzenegger & Cie. gave new credits to Germany even after the separation of the I. G. Chemie from the I. G. Farben.

The investigation of the Clearing Office showed three transactions that are to be considered banking transactions exclusively and not transactions that were carried out simply on the basis of special connections.

One transaction concerns a sub-participation in a credit, which was given by the Schweizerischer Bankverein to the I. G. Farben in Germany and in which Sturzenegger & Cie. had a subparticipation of 1/6, which is purely a banking matter that in no way can be considered as showing a par-

ticular connection or tie between Sturzenegger & Cie. and the I. G. Farben.

In October 1940, Sturzenegger & Cie. permitted the I. G. Farben a temporary overdraft of its dollar account, which at the beginning of December 1940 was repaid by another Swiss bank.

The third transaction made by Sturzenegger & Cie. was purely a liquidation measure such as was customary not only in Switzerland but in all countries having banking transactions with Germany. As may be recalled, foreign exchange control was introduced in Germany in June 1931. The first consequences of the foreign exchange control was the so-called Basle Agreement, which was then replaced by the credit agreements in which the banks assumed the obligation, under certain conditions, not to recall the short-term credits given to Germany in foreign currencies. The other credits of the foreign lenders, which do not come within the scope of the standstill credits, remained blocked and could be repaid only by repayment on a blocked mark account. During the course of time there developed

1797 then a very large exchange margin between the real registered mark credits (repayment of standstill credits) and the other blocked mark credits (preferred blocked mark and trading blocked mark). When a repayment in free foreign exchange was not possible, the foreign creditors therefore tried to receive repayment on a registered mark account in order that the loss by the liquidation of the registered marks which were dealt in internationally and particularly in London and Amsterdam, did not reach the same extent as in the liquidation of the hard-to-sell preferred and trading blocked marks. In order to get new foreign exchange, the Reichsbank has pursued the practice of granting creditors certain privileges when old credits were repayed, if the creditor in question granted a new credit between which and the old credits to be repaid there was a certain relationship. These privileges consisted in general in the repayment of the total amount of the credits granted, including the new credit, on a reg-

istered mark account. But if the matter concerned standstill credits, which in any case had to be repaid by way of a registered mark account, rejayment in free foreign exchange was granted against a corresponding statement of renunciation. This kind of liquidation was generally made use of by the various foreign creditors in order to liquidate their credits in Germany without having to sustain the very great loss by way of preferred and trading blocked marks. Sturzenegger likewise made use of this possibility of liquidation. It had, among others, the following blocked accounts in Germany:

standstill credit at the Berliner Handelsgesellschaft	about fr. 424,000.00
standstill credit at the Metallgesellschaft A. G., Frankfurt on the Main	about fr. 212,000.00
blocked credit with Englert & Dr. F. Becker in Prague	about fr. 25,000.00
blocked credit at the Romanil A.-G., Bucharest	about fr. 106,000.00
total	about fr. 767,000.00

The last two credits were guaranteed by the I. G. Farben.

The I. G. Farben took over these *credits in an amount of fr. 767,000.00* on condition that it be granted a further foreign exchange credit of fr. 185,597.00. This amount was paid to the Schweizerische Kreditanstalt in Basle in favor of the Reichsbank Directorate, Berlin (the points described above are clearly evident from this grant). The entire credit claim amounted to exactly fr. 958,366.30.

1798 The approval of the Reichsbank was to the effect that the remaining amount was to be repaid in foreign exchange in 3 equal annual installments against a partial renunciation of the claim. Sturzenegger & Cie. had to give up fr. 212,455.43, whereas fr. 745,910.87 were repaid in 3 annual installments on January 1, 1942, 1943 and 1944. This transaction is to be considered as a normal liquidating transaction.

The other business with Germany had to do with normal payment and deposit transactions with customers who still had credits with Sturzenegger & Cie. These dealings were restricted to large or small amounts, in proportion to the credits on hand.

In judging the question of the power to acquisition of Greutert & Cie.-Sturzenegger & Cie., and particularly the question as to the extent to which the firm could participate in individual transactions, what should be taken into consideration is not only the company's own capital, but its credit—that is, the funds that were made available to it by its creditors and clients. Greutert & Cie.-Sturzenegger & Cie. is a bank which of course works in accordance with the same principles as any other bank and therefore works with foreign capital as well as with its own. A glance at the balance sheet sum shows that Greutert & Cie. could make such transactions to a considerable extent, and especially was able to effect transactions within the scope and the sphere of business of its most important customers, whereby the credit risk, which, as a bank, it incurred in its transactions, was considerably lessened. If, with funds of its own customers, the bank engaged in business transactions of these customers themselves, there was a possibility of eventual compensations so that the risk was smaller. In other words, Greutert & Cie., from a banking point of view, was able to engage in transactions with funds of its own customers to a greater extent than was perhaps usual or advisable for an ordinary bank. It must also be considered that it was precisely these connections, these very large blocks of securities passing through the bank, that enabled it to carry out transactions (especially trading in futures, selling undesignated blocks of securities) that would not have been possible if the situation had been different. But these transactions brought in considerable profits that according to the policy of the bank served to an increased extent to supplement hidden reserves. A large number of these transactions were handled and entered in the books

separately from the current business operations as real syndicate transactions—that is, consortium transactions—particularly for account of the I. G. Chemie and Greutert & Cie. These are the consortia and secretariat accounts, which are to be explained in greater detail further on.

1799 The transactions carried out by way of the secretariat accounts are not I. G. Farben transactions but purely banking transactions that were made with the help of tips, information and knowledge that came to Greutert & Cie. and the I. G. Chemie from the group of their business friends. The profits, therefore, went not to the I. G. Farben, but, as profit from special transactions, to the syndicate members.

c) Preferred Share Capital of the I. G. Chemie.

When the share capital of the I. G. Chemie was increased in 1929, the perferred share capital was created with 400,000 preferred shares at fr. 100.00 = fr. 40,000,000.00, 20% paid. The preferred share capital was subscribed by Greutert & Cie. by order of the I. G. consortium and was also 20% paid. Of these 400,000 shares, 100,000 each went to the following firms against payment of the purchase price:

On December 24, 1929: 100,000 shares to "Chemo" in Holland. The "Chemo" Maatschappij voor Chemische Ondernemingen N. V. in Amsterdam is a company with a share capital of fl. 1,300,000.00, consisting of fl. 1,100,000.00 preferred shares and fl. 200,000.00 common shares. Greutert & Cie. has owned these shares from the beginning—that is, acquired them for Secretariat A. The common share capital was likewise acquired by Greutert & Cie. in 1929, so that "Chemo" must be considered a company belonging to Greutert & Cie., or, in other words, a company controlled via Secretariat A. In other words, the 100,000 preferred shares of "Chemo" remained under power of disposal by Greutert & Cie. "Chemo" was then liquidated in 1944.

Further 100,000 preferred shares were sold by the I. G. consortium to the Eidgenoessische Bank A. G. on September 20, 1929—that is, the Eidgenoessische Bank acquired these shares by order of the Industriebank A. G., Zurich. At this time the Industriebank A. G. in Zurich was still German-controlled.

100,000 preferred shares were sold on September 24, 1929, to the Osmon A. G. Osmon is a company belonging to the I. G. Chemie. It was established in 1905 when agreements between the Farbwerke Hoechst on the Rhein and Messrs. von Glenck, Basel, and Hafliger, Vogt & Cie., Bern, were taken over. In 1929 the I. G. Chemie then acquired the Osmon shares at par through Greutert & Cie. Greutert & Cie. acted only as intermediary between the German shareholders and the I. G. Chemie. The purpose of the Osmon A. G. with regard to the I. G. Chemie was particularly to take over securities and participations. Its work, however, is of secondary importance. Besides the Parta participation and shares of the Voorindu (Maatschappij voor Industrie en Handelsbelangen Amsterdam) Osmon also owned GAF shares. Here, too, the preferred shares were protected in the interest of the I. G. Chemie group.

1800 100,000 shares have been acquired directly by Greutert & Cie. When, in 1938, the first capital reorganization of the I. G. Chemie took place, 200,000 preferred shares were called in or repaid at par—that is, to an extent of 20% of the par value. The reduction of the preferred share capital was made for general reasons, *when the Administrative Board of the I. G. Chemie proposed such a reduction at the general meeting* and as its reason for it stated that if the common share capital were reduced an appropriate reduction of the preferred share capital must also be made.

With regard to the question of the preferred shares it should be said that preferred shares with increased voting power are not looked upon with favor by the public shareholders, who are excluded from such preferred shares, and

that when such shares have too great a voting power (which means that even if the total common share capital were represented they would control it), the common shareholder would feel that his rights had been prejudiced. If it is desired to place the common shares properly among the public, the preferred shares should not assume excessively large proportions, and it is therefore understandable that "from an ocular point of view" a reduction of the preferred share capital also had to be made as soon as the common shares were reduced.

In 1939, Sopadep in Lausanne then acquired the 100,000 "Chemo" preferred shares from the I. G. Chemie.

On the occasion of the capital reorganization, which was connected with the cancellation of the dividend-guarantee agreement, the preferred share capital was again reduced by calling in 100,000 common shares at par. The remaining shares were then divided into 40,000 Sopadep shares and 60,000 Industrie Bank shares.

The Sopadep participation of 40,000 shares and that of the Industrie Bank of 60,000 shares have also given rise to conjecture. Investigations of the reasons for this division disclosed no facts or motives which apply to any circumstances influencing the situation. The reasons for this division were solely considerations of business policy to the effect that it would be more appropriate for the Industrie Bank—as the one with the greater capital—to own more preferred shares than Sopadep.

In this connection the Americans also raised the question as to why the I. G. Farben permitted these valuable preferred shares to go into hands over which the I. G. Farben had no control. The strange thing about the entire I. G. Farben-I. G. Chemie setup is that the I. G. Farben controlled the I. G. Chemie not by way of votes and shares but by the dividend-guarantee and option agreement. The I. G. Farben needed foreign exchange. If the I. G. Chemie had been only a holding company in the usual sense of the

word, the I. G. Farben would have received the shares of the I. G. Chemie

1801 in the place of its foreign trade that had been made over to the I. G. Chemie, that is, a direct participation in concerns would have been exchanged for large stock holdings in a holding company and the I. G. Farben might later have had to liquidate these securities under pressure of the Foreign Exchange Control Office. In any event the I. G. Farben would not have got any foreign exchange.

As Colonel Birckl expressly pointed out in a discussion at the Clearing Office, the I. G. Farben received a total of 200,000,000.00 Swiss francs for the foreign enterprises made over to the I. G. Chemie. The I. G. Farben, consequently, got back the equivalent of the foreign enterprises (since the value of the assets of the I. G. Chemie amounted to 187,000,000.00 on December 31, 1944, for instance) and by the dividend-guarantee and option agreement demanded the right to take the assets again at any time. The I. G. Farben, therefore, did not need to exercise its influence by votes. If the business policy of the I. G. Chemie was not agreeable to the I. G. Farben, it was possible at all times for the I. G. Farben to take the foreign enterprises back again by exercising the option right. This setup subsequently proved to be very favorable, for the I. G. Farben was thereby relieved of the danger of having (under official pressure) to sell its foreign participations or exhausting them with regard to foreign exchange after the seizure of power by the National Socialist Party and because of Germany's great hunger for foreign exchange. The I. G. Farben had only a right of repurchase of the participations and this right was tied up with the conditions which were not agreeable to the foreign exchange control offices, that the I. G. Farben had to raise the necessary foreign exchange if it wished to exercise the option right.

The result, therefore, is that the actual form and distribution of the shareholdings were of secondary importance

to the I. G. Farben; for the I. G. Farben the key to legal and economic control was the dividend-guarantee and option agreement. As soon as the dividend-guarantee and option agreement was cancelled, the position of preference and domination over the I. G. Chemie disappeared. In the opinion of the Clearing Office it is therefore not of great importance how the common and preferred shares were distributed and resold or in whose hands they were individually; for one thing is certain and that is that the I. G. Farben did not attach, nor did it have to attach, any importance to the distribution of the shareholdings. As long as the option agreement existed, the I. G. Chemie could not avoid control by the I. G. Farben. Even though the tendency stated by the Clearing Office in its exposé regarding the business policy of Greutert & Cie. and of the Swiss managing directors of the I. G. Chemie was to get key positions with regard to the shareholdings, they did not have to reckon upon opposition by the I. G. Farben. This policy, however, could only be carried out successfully if it was possible to cancel the dividend-guarantee and option agreement.

1802 *d) Situation at the Industrie-Bank A. G., Zurich, with regard to the shareholders.*

The Industrie-Bank was established in 1929 with a share capital of fr. 3,000,000.00. On September 24, 1930, there was an increase to fr. 5,000,000.00. The original fr. 3,000,000.00 were completely in the possession of German shareholders and were taken over from them by Ed. Greutert & Cie. at the end of 1930 and at the beginning of 1931, whereby the German shareholders were paid either in cash with sfrs. 3,380.00 per share of nom. fr. 1,000.00 or by exchange against 10 I. G. Chemie common shares. Greutert & Cie. took over at par the newly issued fr. 2,000,000.00 and thus possessed the entire share capital of the Industrie-Bank. On December 31, 1936, the Industrie-Bank shares went to various shareholders at a price of 60% by way of

the Visca A. G. as intermediary. The price of 60% caused Greutert & Cie. a loss that was charged to Secretariat Account A. The reason for setting a price of 60% is the circumstance that the Industrie-Bank always paid the shareholders only a 3% dividend. The decisive point for the sale of the shares was the *letter from Visca of January 8, 1937*, to the individual shareholders in which the pledging of the shares, so far as the shareholders had received advances, is set forth, as well as the offer obligation to Visca and the price of the re-acquisition of the shares. The shareholders in question are the following:

Th. Wolfensberger, Zurich:

nom. fr. 700,000.00 on December 31, 1936, purchase price fr. 420,000.00

nom. fr. 150,000.00 on December 31, 1939, purchase price fr. 102,000.00

nom. fr. 850,000.00 total, holdings today.

The price of fr. 420,000.00 for the shares of nom. fr. 700,000.00 was paid from personal funds. The shares in an amount of nom. fr. 150,000.00 come from the Greutert estate and were taken over by Wolfensberger at a price of 68%. For payment of the purchase price of fr. 102,000.00 Wolfensberger made use of an advance from the Rigidor A. G., Berne, which was discharged on December 29, 1941, by a covered bank credit. This credit has today increased to fr. 115,000.00, and therefore an amount of nom. fr. 150,000.00 is to be considered as tied up for credit security.

Estate of G. C. Du Bois, Peseux:

nom. fr. 200,000.00 on December 31, 1936, purchase price 120,000.00, holdings today.

The purchase price was paid by Dr. Du Bois from personal funds.

1803 *C. Mollwo, Prilly.*

nom. fr. 450,000.00, on December 31, 1936, purchase price fr. 270,000.00
nom. fr. 150,000.00 on December 31, 1939, purchase price fr. 102,000.00

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nom. fr. 600,000.00 total, holdings today.

The nom. fr. 150,000.00 come from the Greutert estate and are paid at 68%. The purchase price for the total nom. fr. 600,000.00 was advanced by the Visca A. G. or the Rigidor A. G. C. Mollwo paid off this advance to fr. 229,000.00 with funds of his own, and with the difference in his favor between the advance interest and the divided receipts. Of the 600 Industrie-Bank shares 300 shares are pledged to the Rigidor A. G. as security for the advance that was made.

Mrs. Haller, widow, legatee of Hans Haller, Binningen.

nom. fr. 500,000.00, on December 31, 1936, purchase price fr. 300,000.00
nom. fr. 75,000.00, on December 31, 1939, purchase price fr. 51,000.00

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nom. fr. 575,000.00
— fr. 300,000.00, on October 3, 1947, selling price fr. 270,000.00

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nom. fr. 275,000.00 total, holdings today.

The nom. fr. 75,000.00 shares, acquired on December 31, 1939, come from the Greutert estate. After the death of Mr. Haller, nom. fr. 300,000.00 were sold, according to the shareholders' agreements, for discharging the debit balance paid off by Haller from funds of his own to about fr. 80,000.00 (German fr. 225,000.00, Dr. Sturzenegger fr. 75,000.00). The rest remained free of debt with Mrs. Haller, Widow.

Dr. Hans Stürzenegger, Binningen.

nom. fr. 500,000.00, on December 31, 1936, purchase price fr. 300,000.00
nom. fr. 150,000.00, on December 31, 1939, purchase price fr. 102,000.00
nom. fr. 75,000.00, on October 2, 1947, purchase price fr. 52,500.00

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nom. fr. 725,000.00 total, holdings today.

The nom. fr. 150,000.00 come from the Greutert estate, and the nom. fr. 75,000.00 from the Haller estate.
The advance from the Visca A. G. or the Rigidor A. G. for partial payment of the purchase price still amounts today to fr. 250,000.00.
nom. fr. 345,000.00 shares are pledged for this.

Walter Germann, Basel.

nom. fr. 100,000.00, on December 31, 1936, purchase price fr. 60,000.00
nom. fr. 175,000.00, on December 31, 1939, purchase price fr. 119,000.00
nom. fr. 225,000.00, on October 2, 1947, purchase price fr. 157,500.00

Nom. fr. 500,000.00 total, holdings today.

1804 The nom. fr. 175,000.00 come from the Greutert estate; the nom. fr. 225,000.00 come from the Haller estate. The advance from the Visca A. G. or the Rigidor A. G. for payment of the purchase price still amounts today to fr. 343,000.00. Nom. fr. 450,000.00 are pledged for this.

Basil Werder, Basel.

Nom. fr. 250,000.00 on December 31, 1936, purchase price fr. 150,000.00, holdings today.

Werder paid fr. 50,000.00 from his own funds and had fr. 100,000.00 advanced by the Visca A. G. or the Rigidor A. G. He repaid this advance entirely from funds of his own.

R. Sutter, Munchenstein.

Nom. fr. 250,000.00 on December 31, 1936, purchase price fr. 150,000.00, holdings today.

Fr. 100,000.00 were advanced at the time by the Visca A. G. or the Rigidor A. G. Fr. 50,000.00 were paid from personal funds. He has entirely repaid the advance.

The rest of the share capital of the Industrie-Bank A. G. of nom. fr. 1,350,000.00 is owned by the Rigidor A. G., Berne.

With a view to maintaining continuity in the distribution of the shares, all the shareholders of the Industrie-Bank A. G. concluded a syndicate agreement on *January 19, 1940*, in place of the agreements with the Visca A. G. This agreement stipulates an offer obligation for the individual shareholders in the event of death as well as the conditions of acquisition for the new purchasers. The agreement of January 19, 1940, was declared void in consequence of a new *agreement of May 31, 1944*. According to the new agreement, the shareholders grant one another the privilege of purchasing before others with the understanding that at the same time they engage in a manner legally binding for their successors also, to offer their shares to the other shareholders of the Industrie-Bank before selling them to third parties. The offer must be made to the Rigidor A. G., Berne, as trustee for the shareholders, which in turn must make the shares available to the individual shareholders. The price at which an offer for sale must be made amounts today to 90%, with the reservation, however, of a future unanimous resolution of all concerned that it be changed.

1805 As a rule the shareholders of the Industrie-Bank represented their shares themselves. It was only

when the general meeting did not take place at H. Sturzenegger & Cie.'s that the Basel shareholders had themselves represented by a single representative.

In short, it may be said again that for the total fr. 5,000,000.00 shares of the Industrie-Bank A. G. there are still advances in an amount of fr. 937,000.00 altogether for which total nom. fr. 1,245,000.00 shares are pledged as security.

The assets of the Industrie-Bank for the most part comprise participations in Sturzenegger & Cie. and the 60,000 I. G. Chemie preferred shares. A dividend of 3% is regularly distributed by the Industrie-Bank to the shareholders. Surpluses are carried forward, after the regular allocation to the reserves has been made.

e) Situation at the Rigidor A. G. Berne, with regard to the shareholders.

Rigidor was established in 1928 with a share capital of fr. 100,000.00, which was entirely in German hands—that is, in the possession of Karl Roesch. At the beginning of 1939 the shares went over by purchase—at par—into the possession of C. Mollwo. On March 31, 1939, the company increased the capital to fr. 500,000.00.

Shareholders of Rigidor are:

K. Cassani, Berne.

Nom. fr. 2,500.00 on March 31, 1939, at par;
nom. fr. 47,500.00 on April 14, 1939, at par;
nom. fr. 50,000.00 on February 9, 1940, at par.

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nom. fr. 100,000.00 total, holdings today.

The purchase price was entirely paid from personal funds.

C. Mollwo, Prilly.

Nom. fr. 100,000.00 on April 15, 1939, at par;
nom. fr. 20,000.00 on May 16, 1945, at par;

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nom. fr. 120,000.00 total, holdings today.

The fr. 100,000.00 concern shares that Mollwo acquired from Roesch. The price was advanced to him by the Perpetua A. G., Luzerne. This advance was reduced to fr. 45,000.00 by partial repayments and the difference between advance interest and dividend receipts. The fr. 20,000.00 acquired on May 16, 1945, come from the estate of Dr. Grieshaber and were paid by Mollwo direct.

1806 *Walter Germann, Basel.*

Nom. fr. 50,000.00 on April 14, 1939, at par;
nom. fr. 30,000.00 on April 12, 1940, at par;
nom. fr. 20,000.00 on May 16, 1945, at par;

nom. fr. 100,000.00 total, holdings today.

The nom. fr. [illegible]0.00 were taken over from the estate of Dr. Griesh[illegible]ber. Germann got an advance from the Rigidor A. G., which he repaid entirely with personal funds.

Dr. J. Auer, Zurich.

Nom. fr. 40,000.00 on April 16, 1940, at par;
nom. fr. 35,000.00 on May 16, 1945, at par (estate of Dr. Grieshaber);

nom. fr. 75,000.00 total, holdings today.

The price of all the shares taken over was paid entirely from personal funds.

Mrs. Haller, widow, legatee of Hans Haller, Binningen.

Nom. fr. 50,000.00 on September 14, 1939, at par;
nom. fr. 30,000.00 on April 12, 1940, at par;
nom. fr. 25,000.00 on May 16, 1945, at par (estate of Dr. Grieshaber);

nom. fr. 105,000.00 total, holdings today.

Haller got advances from Perpetua or Sturzenegger & Cie, which were entirely repaid from personal funds. The shares taken over by him are with Mrs. Haller, widow.

In order to insure the continuity of the group of shareholders, there is *an option right in the event of death* of the shareholders also on the Rigidor shares in favor of the Perpetua A. G., Luzerne, which in turn will make the shares available to the individual shareholders. On the other hand, no privileges of purchasing before others have been agreed upon among the individual shareholders. The only Rigidor shares that are pledged are those of nom. fr. 100,000.00 of C. Mollwo for the Perpetua A. G. advance of fr. 45,000.00. This is the only advance today among the shareholders of the Rigidor group. The assets of Rigidor comprise bank credits, securities and accounts receivable, the latter in an amount of about fr. 800,000.00.

1807 *f) Société Auxiliaire de participations et de Dépots S. A. a Lausanne:*

In 1939 Greutert & Cie. established Sopadep as an evacuation company. The share capital amounted to fr. 1,000,000.00 and was taken over by the following shareholders:

C. Mollwo, Prilly.

Nom. fr. 550,000.00 on January 17, 1939, at par.

Mollwo paid fr. 294,000.00 from funds of his own and got an advance of fr. 256,500.00 from the Perpetua A. G. This advance was reduced to about fr. 250,000.00 by the difference between dividend distribution and advance interest.

Estate of Dr. G. C. Du Bois, Pesenx

Nom. fr. 175,000.00 on July 15, 1940, at par.

The Perpetua A. G. gave him an advance that he repaid in part from funds of his own.

Today 50 of the shares of the deceased Dr. Du Bois are in possession of K. Cassani and 125 shares are in the possession of the Industrie-Bank A. G. These two shareholders paid the purchase price at par from funds of their own in cash.

Perpetua A. G., Luzerne.

The rest of the share capital of Sopadep (that is, fr. 275,000.00) is with the Perpetua A. G., which took it over from the estate of Ed. Greutert. Nom. fr. 256,000.00 Sopadep shares are pledged for the advance granted to Mollwo by Perpetua.

In the event of death there is an option right at par on the Sopadep shares of Mollwo and Cassani in favor of the Perpetua A. G., Luzerne.

Individual transactions in securities were carried out by way of Sopadep, which was intended as a "sidetrack" company during the war for Sturzenegger & Cie. These transactions involved securities of companies of the I. G. Chemie-Ed. Greutert-Sturzenegger & Cie. group. At the end of 1945, for instance, the following was in the portfolio of Sopadep:

3,000 I. G. Chemie common shares, 50% paid;
40,000 I. G. Chemie preferred shares, 20% paid;
600 shares of Perpetua A. G., Luzerne.

Its principal creditor at this time was Sturzenegger & Cie. with about fr. 600,000.00.

1808 In connection with the financing of the Industrie-Bank A. G., the Rigidor A. G. and the Societe Auxiliaire de Participations et de Depots S. A., which together show a share capital of fr. 6,500,000.00, there still exist advances today of a total of fr. 4,232,000.00, for which shares in a total amount of nom. fr. 1,600,000.00 are pledged.

1809 *g) Situation at the Perpetua A. G., Luzerne, with regard to the shareholders.*

The Perpetua A. G., Luzerne, was established in 1931 with a share capital of fr. 100,000.00. The share capital was subscribed for in trust for Ed. Greutert & Cie. by Dr. Karl Grieshaber, Zuerich, in an amount of fr. 60,000.00 and Dr. Albert Maag, Zuerich, in an amount of fr. 40,000.00

In 1939 there was a capital increase of fr. 900,000.00 to fr. 1 million, which was taken over by Ed. Greutert & Cie. Today the shares are divided as follows:

H. Sturzenegger & Cie.	fr. 700,000.00
Sopadep S. A., Lausanne	fr. 300,000.00
	fr. 1,000,000.00

During the first years Perpetua did no business of importance. At the end of 1938, for a price of fr. 1,797,000.00, it acquired all the shares of the Visca A. G., Schaffhausen, in order to effect its liquidation. From the liquidation of the Visca A. G. there resulted proceeds in an amount of about fr. 3,500,000.00, which were used primarily for covering the purchase price of the Visca shares. The rest went to Rigidor which credited them to a secretariat account as a reserve for write-offs and for the purpose of pension obligations assumed for leading men of Sturzenegger & Cie.

Among other things, Perpetua also participated in the placing of the Rigidor shares. In order to insure continuity of the Rigidor group of shareholders, it has in its possession an option right in the event of death from every Rigidor shareholder to his Rigidor shares. The same applies to the shares of the Sopadep S. A., Lausanne.

b) Statements of the managing directors and shareholders.

During the discussions with the representatives of the Joint Commission, it was asked whether all the shareholders had already been interrogated individually. The greater number of the shareholders of the various companies and the managing directors of the I. G. Chemie have been interrogated. Everyone who was not interrogated had to sign a corresponding *statement*. All the gentlemen in question signed the required statements without any hesitation or objection.

1810 *i) Common share capital of the I. G. Chemie.*

The common share capital of the I. G. Chemie—that is, the capital increase of 1929—was divided as follows (cf. appeal exposé of the Clearing Office, pg. 6):

130,000 fully paid = fr. 65 millions
160,000 50% paid = fr. 40 millions (80 millions)
210,000 20% paid = fr. 21 millions (105 millions)

Of the fully paid shares, 30 millions were previously taken over by a Swiss banking consortium under the direction of the Schweizerischer Bankverein and the Schweizerische Kreditanstalt, and 15 millions by a Dutch consortium under the direction of Mendelssohn & Co., Amsterdam. 20 millions were subscribed for by Greutert at the time of the establishment in 1928. The proceeds from them were used for the most part to acquire the shares of Durand Huguenin, Basle, and of Norsk Hydro. The Norsk Hydro shares had been purchased at the time by the I. G. consortium and then sold to the I. G. Chemie via Greutert.

The half-paid shares of 80 millions were placed at the disposal of the I. G. Farben for the purpose of granting an exchange right to the holders of I. G. Farben shares or I. G. Farben bonds.

Since all the shares concerned here are bearer shares, it is very difficult to follow the actual blocks of shares, and a complete list of the shareholdings is almost out of the question. If, in the Investigators' Report, an attempt was made to present such a list, it must be said from the beginning that these statements were based only on the deposit books of Greutert & Cie., and that it should not be forgotten that the purchase and sale of securities, and particularly the utilization of the possibilities of profit arising from these transactions, fell within the scope of work of Greutert & Cie. It is therefore not surprising that more shares than were issued were at times entered in the deposit books.

Since Greutert & Cie. managed large blocks of I. G. Chemie shares for third parties, whereby Greutert & Cie.

knew that various large blocks were definitely placed while other blocks were placed only temporarily, whether with closely connected firms, syndicates, or other concerns, it is obvious that Greutert & Cie. operated to a considerable extent with these blocks along banking lines; for the shares that were sold and purchased were credited or debited to a great extent only on the deposit accounts. These credits, the total of which—as already mentioned—at times exceeded the total number of the

1811 shares in circulation of the category in question, could be made by Greutert & Cie. without risk, because Greutert & Cie. was in a position to procure missing items to be delivered from firms with which it was on friendly or intimate terms. Moreover, Greutert & Cie. always had the possibility, in agreement with the I. G. Chemie, to procure cover for itself from the 210,000 shares that were only 20% paid and not yet quoted on the stock exchange. These 210,000 shares were more or less in the nature of *Vorratsaktien* [for explanation see end of page 25 and beginning of page 26]. This matter will be treated in greater detail later on.

For the aforementioned reasons the deposit books of Greutert & Cie. therefore show about 180,000 fully paid shares in 1932, although only 130,000 were issued. In this connection, the American representatives raised the question as to who had borne the loss on the shares sold in 1931 to the American I. G. Chemical Corporation, since they had formerly been issued at 225 or 218% (at the time of the first issue 150%) and sold to America at 171%. In forming an opinion of this question it must be pointed out that the share issue of the I. G. Chemie was made at the most favorable time. In 1929, the highest price of the fully paid I. G. Chemie shares was fr. 1,145.00 and the lowest price fr. 925.00; the price as of December 31, 1929, was fr. 960.00; in 1930 the highest price was fr. 1,020.00 and the lowest price fr. 707.00; the price at the end of December 1930 was fr. 743.00; in 1931 the highest price was fr. 945.00 and the

lowest price fr. 445.00, and the price as of December 30, 1931, was fr. 460.00. This shows that the I. G. Chemie shares were also affected by the stock market crash in America in 1929/30 and particularly that the I. G. Chemie shares were then strongly influenced in their price by the events in Germany (foreign exchange blocking), which in view of the dividend-guarantee agreement with the I. G. Farben was only too understandable. If the middle price of 1931 is taken, the result is an amount of fr. 695.00 = 139%. The shares, however, were sold to America in 1931 at a price of 171% = fr. 855.00. If it is also taken into consideration that, in consequence of the foreign exchange control and the general stock market tendency, considerable blocks of shares were thrown on the market and that Greutert & Cie. felt called upon to intervene and purchase, it may be assumed that the original public shareholders and firms were glad to get off with a relatively small loss in the general stock market collapse. On the other hand, Greutert & Cie. had the possibility of disposing of the shares at a good price (171%). It can hardly be assumed that Greutert & Cie., or the firms and companies closely connected with the I. G. Chemie, sustained a loss in this transaction.

1812 Another question raised with reference to the fully paid shares concerns the possession of 28,852 shares by the Fiduziar-Gesellschaft. These items are transitory items, which were temporarily transferred from Secretariat B to the Fiduziar-Gesellschaft and then sold further.

Further questions were asked by the Americans with reference to the 160,000 50% paid common shares. The above general explanations apply also to this class of shares.

The 80,000 shares belonging to the American I. G. Chemical Corporation were deposited in Switzerland with Greutert & Cie. until 1940. They are contained in the item "Holdings in Safe" of 1933. This designation is a general term for the shares under the management of Greutert & Cie. No conclusion has been reached as to their

ownership. This may be a question of either personal or outside ownership.

From whom and how the Deutsche Laenderbank purchased the 4,792 shares shown in 1933 cannot be ascertained. It has not been decided whether the Deutsche Laenderbank held these shares for its own or an outside account. The increase to 25,414 shares in 1938 then gave rise to comment. This matter too can be explained from Switzerland only by conjecture. One thing, however, is certain and this is that in Germany in 1937/38 the compulsory deposit of foreign securities was introduced, so that the German shareholders were forced to deposit the I. G. Chemie shares in a German bank. Since the half-paid shares were offered primarily to the shareholders of the I. G. Farben, it is understandable that a good-sized block of these shares was deposited at the Deutsche Laenderbank by persons closely connected with I. G. Farben.

The Heydt-Kontor B, which owned 7,750 shares in 1938, is a subsidiary of the Deutsche Laenderbank.

The 15,682 shares that went to the Fiduziar-Gesellschaft in 1938 comprised a block that was purchased by this company from Secretariat G for discharging an uncovered item.

The Americans also asked what the significance was of the 210,000 20% paid shares. As has already been explained orally, there exists legally in Germany the institution of the *Vorratsaktie*, which means that a company is entitled to decide on share issues and to issue them formally, and

1813 that the management as such then decides without further general meeting whether, when and how many shares are to be issued in each individual case. The institution of the Vorratsaktie is not known in Swiss law. If a company wishes to keep such shares to its disposal, it must actually issue them; the shares must be subscribed for and at least 20% must be paid. Since in the plan for the development of the I. G. Chemie further issues were provided for, particularly the exchange of I. G. Chemie

shares for shares of other companies in which it wished to participate, a definite supply of shares for such transactions had to be available. But since Vorratsaktien were practically possible only by way of subscription and reservation, Greutert & Cie. formally had to subscribe for the 210,000 shares and pay for them to an extent of 20%. These 210,000 shares were thus in the nature of Vorratsaktien intended for the further expansion of the concern. On the other hand, however, Greutert & Cie. naturally was *not* allowed *to dispose of them without the consent of the I. G. Chemie*, in spite of the fact that according to the stock law the firm was a shareholder and could dispose of the shares (for they had been formally placed without reservation). Greutert & Cie. assumed such an obligation. But since, by subscribing for the 210,000 shares, Greutert & Cie. was formally obligated, especially with regard to third parties, to pay in the remaining 80%, so far as this was demanded officially or by the company for the protection of the creditors, Greutert & Cie. in turn stipulated for itself the backing of the I. G. Farben whereby the I. G. Farben would provide cover if necessary; for such an obligation might otherwise have endangered Greutert & Cie. 20% on the 210,000 shares was credited to the account of the I. G. Chemie so that the entire transaction took place only in the books, which emphasizes the nature of the shares as Vorratsaktien.

k) I. G. Consortium, Secretariat Accounts, Grutchemie Consortium.

In connection with the establishment of the I. G. Chemie and the execution of various transactions, consortia and secretariat accounts were mentioned that require a more detailed explanation. The I. G. consortium existed already before the establishment of the I. G. Chemie and was managed by Greutert & Cie. There was no real consortium agreement, so that it is difficult today to speak of consortium members. The examination of the I. G. consortium and the transactions that were made through it showed

that the decisive influence and power lay in the hands of Greutert & Cie., or Greutert.

1814 The I. G. consortium may perhaps best be termed the precursor of the idea of establishing the I. G. Chemie in that securities and participations and particularly transactions that later were turned over to the I. G. Chemie, or which came within its sphere of activity, were handled through this consortium. It is clear that this consortium played a part in the establishment, too. If in the Executive Board it was stated that the I. G. consortium was closely connected with the I. G. Farben, this description does not appear to be quite clear, for it was evident from the files that Greutert & Cie. had the leading position even though securities and assets belonging to the I. G. Farben group were handled by way of this consortium. When the establishment took place the reference to the I. G. Farben was looked upon as a factor of security and reliability for the Executive Board as well as for outsiders. Supported by the considerable credits of the I. G. Farben at Greutert & Cie., the I. G. consortium was made use of by Greutert & Cie. to carry out corresponding transactions in securities. Even though there was no real consortium agreement, Greutert & Cie. and its business friends were aware that these transactions served for the most part as precursor of the contemplated I. G. Chemie. The greater part of the assets in the I. G. consortium were then transferred during the course of time to the I. G. Chemie. Another portion was transferred to Secretariat Account A., which likewise belonged primarily to the I. G. Chemie (besides Greutert & Cie.)

The secretariat accounts appeared only after the establishment of the I. G. Chemie and were financed jointly by the I. G. Chemie and Greutert & Cie. Large transactions in securities and foreign exchange, which were in part connected with other I. G. Chemie transactions, but in other parts were based on tips and hints that Greutert & Cie. or the I. G. Chemie got from their business friends, were handled by way of these secretariat accounts. *It*

should be expressly stated, however (and the careful examination of all the secretariat accounts could not show anything to the contrary), that these transactions were not made for the I. G. Farben. Certain compensations were made to individual persons as remuneration for services rendered—that is, for tips and advice given. The secretariat accounts were kept as customers' accounts, and this for two reasons. First, neither the I. G. Chemie (the principal participant) nor Greutert & Cie., wished to enter certain holdings of securities officially in the balance sheet, if only in consideration of the competitors and the financial press; for it was not only always advisable to give outsiders information as to what firms were participated in and how the participation was valued; and secondly, these accounts were kept for reasons of taxation and financial policy. For the I. G. Chemie the assets

1815 on the secretariat accounts constituted an actual reservoir from which funds were conveyed to the I. G. Chemie in order to adjust losses when necessary; or else special profits were carried on these secretariat accounts in order not to have such profits appear outwardly. In other words, the assets on the secretariat accounts were supposed to guarantee the continuity of receipts, dividends and the safe valuation of the assets. This purpose is evident from the use of the assets. Thus, for instance, in 1933, an amount of fr. 6,152,056.80 was paid to I. G. Chemie, to the debit of Secretariat G., for covering a foreign exchange deficit. In 1934, an amount of fr. 412,967.60 was paid to I. G. Chemie to the debit of the same secretariat account. In 1934 also, the I. G. Chemie was paid an amount of fr. 4,328,944.00, to the debit of another secretariat account, in order to adjust a particular loss that if had sustained on a participation. Other such payments are evident from the files.

These findings show that the secretariat accounts and the consortium accounts were kept in the interest of the I. G. Chemie primarily, and in the interest of Greutert & Cie. and affiliated companies secondarily. Even though there

were no individual consortium agreements; it is never less clear that, in consequence of the partial personal u in the management of Greutert & Cie. and the I. G. Che the profits on these consortium accounts were rightly in the interest of the participants or, in other words, two concerns that financed these accounts and in wi hands lay the management also.

With regard to the Grutchemie consortium, this was first consortium in connection with which an actual sortium agreement was concluded. The Grutchemie sortium was given sustenance in that assets, which still in the secretariat accounts, were transferred to Grutchemie consortium as an investment of the I Chemie, while Greutert & Cie. in turn brought assets the Grutchemie consortium that corresponded to one n of the assets brought in by the I. G. Chemie, so that I. G. Chemie then participated in the Grutchemie sortium with nine tenths and Greutert & Cie.-Sturze ger & Cie. with one tenth. The assets brought in by I. G. Chemie reached the amount of about 42 mil francs. Securities and foreign exchange transactions w handled through the Grutchemie consortium, just through the secretariat accounts.

1816 *l) Igesol Consortium.*

The Igesol consortium is a consortium between the I Chemie and Solvay & Co., Brussels, which was mana by Ed. Greutert & Cie. Greutert & Cie. here had n trust functions and received a certain compensation fo work. Solvay & Co. placed $2,000,000.00 in the I. G. sortium, while the I. G. Chemie gave 2 amounts of al Sfr. 19,000,000.00 each (all together about Sfr. 38,0 000,00). Through this consortium were carried out r actions in securities, such as Dynamit Nobel, Riebeck' Montanwerke, I. G. Farben and Rheinisch-Westfali Sprengstoff A. G. In 1940 the consortium was dissol and when this took place Solvay & Co. was paid RM 9,

000.00 I. G. Farben common shares. The profit from this consortium amounted to about fr. 6,500,000.00.

The work of the consortium and the handling of the transactions give rise to no particular remarks.

m) Capital Formation of the I. G. Chemie and Greutert & Cie.-Sturzenegger & Cie.

During the various discussions with the representatives of the Joint Commission it was asked how the capital was formed and where it came from. The following brief remarks may serve to answer this question:

1. Capital Formation of Greutert & Cie.

The formal or open capital of Greutert & Cie.-Sturzenegger & Cie. has already been reported on. It should be noted that large transactions were carried out through Greutert & Cie. The development of the balance sheet sums reflects this very clearly. If Greutert & Cie. had a profit margin from these transactions which was normal for these times, the firm must necessarily have made very great profits. The extent of the normal profit margins of the banks at that time (in the twenties) may perhaps be seen from the fact that well-covered mortgages and bank credits in Switzerland normally had to bear 6% to 7% interest and that in dealings with Germany the rates of interest fluctuated between 8% to 10% according to the nature of the transaction. Daily money to first-class German banks bore 5% and 6% interest. The findings of the Clearing Office showed that Greutert intentionally drew relatively small profits from the firm, but on the other hand endeavored to book large profits internally or, by profitably turning over securities to firms closely connected with him, to pass them on and hold them in readiness.

1817 The own funds of Greutert & Cie-Sturzenegger & Cie. that were actually at their disposal were considerably greater than is evident from the balance sheet.

It should also be expressly stated that Greutert himself did not particularly wish to enrich himself, for he had no children and appeared to attach the greatest importance to strengthening internally the firms closely connected with him.

2. I. G. Chemie.

The same considerations as those mentioned with regard to Greutert & Cie. apply on principle to the I. G. Chemie also.

It should be noted, furthermore, that the shares (rate of issue over 200%) taken over by the two banking consortia must be considered the actual payment for the shares issued. Moreover, the I. G. Farben had to pay at 150% the fr. 80,000,000.00 half-paid I. G. Chemie shares that had been ceded. The first issue was likewise paid in cash and the participation in Durand & Huguenin and Norsk Hydro was taken over as equivalent. Besides the normal business, however, the I. G. Chemie was now a co-participant in the consortia and secretariats, which have already been reported on. The normal profits from all these transactions amounted to over fr. 120 millions for the period from 1930 to 1937, as the Clearing Office was able to ascertain.

With the compensation of 1936/37 large risks in Germany were eliminated, so that considerable internal reserves of both firms became free which in turn could be used for other transactions.

In conclusion, according to the findings of Colonel Birkl, the French expert, the I. G. Farben received Sfr. 200,000,000.00 for the securities transferred to the I. G. Chemie; the assets on the other hand, amount to about fr. 187 millions.

The I. G. Farben thus received the equivalent, and the procuring of other assets is to be ascribed to the careful and methodical management and business dealings of the two firms.

1818 *n) The Understanding Arrived at Between the I. G. Farben and the I. G. Chemie.*

Reference is made to the appeal expose concerning the discussions and the previous history of the cancellation of the dividend-guarantee and option agreement. In the memorandum it is now asserted that the question of the purchase price (or the price involved in connection with the separation) was not discussed. The Clearing-Office believes that this point was discussed in rather great detail. The following statements may serve as supplement to the expose.

In the agreement of separation it was determined that the I. G. Chemie had to pay fr. 10,000,000.00 in free foreign exchange and to deliver RM 2,100,000.00 shares of the Westfaelisch-Anhaltische Sprengstoff A. G. (WASAG) and RM 500,000.00 3% funding bonds of the Conversion Office. On the other hand, the I. G. Farben had to deliver 50,000 half-paid I. G. Chemie shares.

In the memorandum of the Joint Commission it is now stated that this transaction represents a loss for the I. G. Farben, and that in a letter of 7-11-1940 to the Reich Ministry of Economics the I. G. Farben said that the purchase of the 50,000 I. G. Chemie shares had involved a loss of RM 25,700,000.00. The persons responsible for these matters at the I. G. Chemie expressly declared that it was not their task to compute whether and how the I. G. Farben would sustain no loss; their task was simply to do what the agreement required.

With regard to the computation of the I. G. Farben, it is clear that this communication to the Reich Ministry of Economics served a definite purpose and in all probability represents a purely theoretical computation. In any event, the I. G. Farben appears not to have suffered a material loss, but for particular reasons only to have computed such a loss in a purely theoretical way.

During the period from May 9 to July 10, 1940, the price of the half-paid I. G. Chemie shares fluctuated between 455

and 520. If the price of 455 is taken as a basis and the unpaid amount of fr. 250.00 is taken into consideration, the half-paid I. G. Chemie shares represent a value of fr. 205.00. It is clear that, if large blocks of I. G. Chemie shares had been sold on the Swiss stock exchange, the price would have sunk to nothing, particularly in connection with a block of about 50,000 shares. The I. G. Farben therefore realized a very good price with Sfr. 10,000,000.00 for the 50,000 half-paid I. G. Chemie shares. The price is to be evaluated all the higher because at that time the German Reich needed foreign exchange, particularly Swiss francs and dollars. It was not the place of the I. G. Chemie to investigate the rate at which the German Reich took over this foreign exchange from the I. G. Farben. In the apposition of marks and Swiss francs, what should be taken as a basis in any case for the valuation of the purchase price is not the official rate but the blocked mark rate, in connection with which Sfr. 10,000,000.00 would of course result in very considerable amounts.

1819 Besides this, however, the I. G. Farben received RM 2,100,000.00 Wasag shares, of which the value in 1940 can no longer be ascertained in Switzerland, but which must be estimated as at least between 150% and 200%. It should not be overlooked that shares of dynamite factories must have been valuable in 1940. Moreover, the I. G. Farben received an additional amount of nom. RM 500,000 funding bonds. If the letter is rightly understood, the purpose of the computation by the I. G. Farben of the loss appears to have been to leave at least the Wasag shares to the combine and not to have them claimed by the Reich. According to the letter of the I. G. Farben, it took over from the German shareholders a part of the shares, in accordance with the stipulations of the previous dividend-guarantee agreement. According to Sec. 9 of this agreement every owner of common shares of the I. G. Chemie has the right to exchange nom. fr. 500.00 common shares of the I. G. Chemie against nom. RM 400.00 common shares

of the I. G. Farben. In other words, an I. G. Farben share of RM 400.00 had to be handed over for two half-paid I. G. Chemie common shares. It is clear that the I. G. Farben exchanged these I. G. Chemie shares at the expense of its *Vorratsaktien*. It consequently had to hand over 25,000 I. G. Farben shares at the price of RM 400.00 = RM 10,000,000.00. If, of course, the value of Sfr. 10,000,000.00 is converted at the price of 175.00, the result is a considerable loss, and if, moreover, the I. G. Farben takes the market price as the basis of its computation, the loss becomes even greater. But in computing in this way the fact is entirely overlooked that at that time free Swiss francs were considerably more valuable than marks. In other words, the amount of Sfr. 10,000,000.00 represents a very good price for the 50,000 half-paid I. G. Chemie shares, and the assets in RM made over besides were additional assets for the I. G. Farben that were also of importance for it.

For the sake of completeness, it should be stated in this connection that the Sfr. 10,000,000.00 had to be remitted in dollars in accordance with the agreement with the I. G. Farben. *On July 22, 1940*, Sturzenegger & Cie. had the amount of $2,261,176.30 remitted through the National City Bank of New York to the Skandinaviska Banken Aktienbolag, Stockholm, for account of the I. G. Farben. *The securities were turned over in kind.*

In the memorandum the question was also brought up whether an amount had been paid for the cancellation of the dividend-guarantee agreement and the elimination of the option right, since the option right represented a very large value.

This question has already been discussed in the appeal expose. According to the agreement, the I. G. Farben had the right to take over the participations at the book value from the I. G. Chemie, as likewise the special reserve fund which was called "Reserve Fund for Participations and Securities".

1820 The purchase price should have been paid in cash. But the examination of the books and balance sheets

of the I. G. Chemie showed that the I. G. Chemie had never allocated or opened this account "Reserve Fund for Participations and Securities". Upon being questioned the gentlemen said that they had intentionally never done this for they would have had no interest in reducing the value of the assets subject to the option right. For the same reasons the securities and participations were also entered without write-offs at normal market prices. As of December 12, 1945, the A shares of the General Aniline & Film Corporation are in the books in an amount of fr. 144,546,714.00 and the B shares in an amount of fr. 6,677,955.00. If, therefore, the I. G. Farben had wished to take over the most important participation of the I. G. Chemie, it would have had to raise Sfr. 151,000,000.00 in free foreign exchange. The value of an option right, however, is determined by the purchase price to be paid in accordance with the option agreement and the normal or the market price of the securities. If there is no difference between these two values the option right as such has no value whatsoever theoretically, for the securities could just as well be purchased at the stock exchange. Since the participations and securities are in the books of the I. G. Chemie at normal stock exchange prices, the option right, theoretically, can hardly be said to have a special value. In any event, it is understandable that no particular consideration was stipulated for the cancellation of the option right. This is comprehended in the obligation as a whole to take over 50,000 I. G. Chemie shares at full price in return for reichsmark assets. Moreover, it should not be overlooked that the I. G. Chemie has long taken the stand that the I. G. Farben was not in a position to fulfil the dividend-guarantee agreement (cf. appeal expose, page 15, III), for which reason the option right, too, had ceased to exist, for the dividend-guarantee agreement and the option right constitute a unit. Hence, the I. G. Farben saw itself exposed to the danger of having the entire dividend-guarantee agreement declared void

by a court for legal reasons. A special compensation for the cancellation of the option right was therefore not justified.

It should also be considered that the I. G. Farben on its part was released from an obligation, namely, the obligation to guarantee and perhaps also to pay the dividend of the I. G. Chemie—an obligation which in view of the development of the I. G. Chemie's possibilities of acquisition at that time could have been very burdensome, even absolutely impossible. According to Swiss principles with regard to the balance sheet, the I. G. Chemie would in all probability have had to write off its foreign participations to a considerable extent, and this need of depreciation would have had to be covered by the I. G. Farben in free foreign exchange; for according to the dividend-guarantee agreement the I. G. Farben has to make that amount available which enables the I. G. Chemie, *in observing the legal and statutory regulations*, to distribute the guaranteed dividend on its common shares. But a dividend can only be distributed if, in taking the need of depreciation into consideration, profits are shown that are sufficient for paying a dividend.

1821 In order to remove all doubt, it should again be expressly stated that the Sfr. 10,000,000.00 were remitted in dollars and the securities were handed over. The agreement was actually carried out and not simply by way of adjusting the accounts.

In the memorandum the question of the value of the Wasag shares is also brought up, in connection with which it is maintained that the I. G. Farben took over these shares at the price of 449.21%. The I. G. Chemie could not know the price at which the I. G. Farben carried these shares in its portfolio, for the I. G. Chemie had not received any payment for these shares. According to the agreement the obligations are clear. *For the I. G. Farben:* 50,000 half-paid I. G. Chemie shares and cancellation of the option right; *for the I. G. Chemie:* Sfr. 10,000,000.00 in

cash, RM 2,100,000 Wasag shares, RM 500,000 3% funding bonds, and renunciation of the dividend-guarantee agreement. The I. G. Farben consequently did not have to pay anything for the Wasag shares. From the valuation in the portfolio of the I. G. Farben, therefore, no conclusion should be drawn as to whether the I. G. Farben had made the I. G. Chemie any kind of "present".

The reference to the fact that Sturzenegger & Cie. has likewise sold RM 3,494,000.00 Wasag shares to the I. G. Farben is therefore of no importance; this applies particularly to the reference to the price of 101.29%. This price, moreover, is not in accordance with the facts. The investigation of Sturzenegger & Cie. disclosed the following:

Sturzenegger sold the shares at the price of 145% and not 101.29%. The blocked marks that he received were computed at the price of 29.5, from which he then received 6,100 half-paid I. G. Chemie shares at the price of 492.00. The computation may be seen from the following:

Value Wasag shares RM 3,494,000.00 at 145% = RM 5,066,300.00;
value of RM 5,066,300.00 at the blocked mark price of 29.50 = Sfr. 1,494,558.50;
value of the 6,100 half-paid I. G. Chemie shares at the price of 492.00 = Sfr. 1,476,200.00.

The surplus was probably used up for brokerage, stamps and other costs.

The I. G. Chemie was therefore not favored, as is maintained under fig. 3 of the memorandum. Besides, it cannot be understood why the I. G. Farben would have had to pay a tax of RM 2,000,000.00 if it had paid the I. G. Chemie too much or had estimated its compensation at too little.

1822 In the discussions with the Joint Commission it was also said that it seemed strange that the Executive Board of the I. G. Chemie cancelled the dividend-guarantee agreement on its own, although the matter concerned the relinquishment of rights that belonged to the

shareholders. But this objection is not justifiable either, for a company must act through its administrative boards, which then present the matter in question at the general meeting of the shareholders in accordance with the by-laws. The agreement of cancellation was concluded with the reservation of the approval of the general meetings qualified to act on such matters, particularly of the I. G. Chemie. The general meeting of the I. G. Chemie approved the agreement of cancellation, whereupon the resolution was wired to the I. G. Farben, and subsequently the agreement was carried out.

a) Repurchase of the GAF B-shares from the N. V. Maatschappij voor Industrie en Handelsbelangen, Amsterdam, (Voorindu) and Chemo.

On *August 11, 1937*, Greutert & Cie. sold Voorindu 650,000 common B-shares of the GAF for a price of fr. 2,929,714.15. On *September 2, 1937*, additional 300,000 B-shares were sold for a price of fr. 1,354,777.00. The payment of the purchase price was deferred for the time being with 5% interest. Greutert reserved the right of repurchase at the same price until December 31, 1947. As long as the purchase price was not paid the B-shares guaranteed the observance of the agreement. The shares are registered in the name of L. D. Pickering & Co., New York, as nominee. In its letter of *August 13, 1937*, Voorindu declared itself to be in agreement with these conditions.

On *December 29, 1937*, Greutert & Cie. informed Chemo that it had taken over the fr. 4,498,593.00 that Chemo owed the I. G. Chemie. Among other things, 600,000 common B-shares of the GAF serve as security. On *May 10, 1938*, Greutert & Cie. confirmed a new agreement that had been made, according to which the Chemo grants to Greutert & Cie. an option right to the 600,000 common B-shares until the end of December 1947, against payment of the purchase price of fr. 3,109,560.00 supplied at the time by Chemo.

The conditions are exactly the same as those with regard to Voorindu.

On *September 30, 1939*, Greutert & Cie. wrote that it would now make use of its option right to the 600,000 B-shares, and credit fr. 3,109,560.00 to Chemo's account. On *September 28, 1939*, a similar letter went to Voorindu for its B-shares and the equivalent again was credited to its account.

1823 Thereby, in September 1939, the B-shares belonging to Voorindu and Chemo became the absolute property of Greutert & Cie. and not of the I. G. Chemie, as is assumed in the letter of the American Legation of October 31, 1947. These B-shares were transferred to the I. G. Chemie only in 1940, when the dissolution of the dividend-guarantee agreement could already be counted on.

p) Liquidation of the Parta A. G.

Parta was established in 1934 by the Osmon A. G. with headquarters in Lausanne, in order to establish jointly with Zelik and Grigory Josefowitsch (brothers) a French selling company for pharmaceutical products. 50% of Parta's capital was raised by the two brothers. The company was managed by the Fides Treuhandvereinigung. This latter company made available the services of its *Prokurist* [person authorized to sign] Walter Kuhnlein as managing director, after its Director Gonseth. In 1937 the share participation of the brothers went over to Osmon. Parta played only a role of trustee for the Bayer Special Department F in Leverkusen. After the dissolution of the dividend-guarantee agreement, Osmon sought to dispose of Parta, which, however, was hardly possible in view of Parta's unfavorable situation. By agreement of *December 20, 1944*, Osmon transferred all the shares of the Parta A. G. to Walter Kuhnlein without any reservation whatever, and also transferred to Kuhnlein the claims that it had against the Parta A. G. In view of the unfavorable situation of the Parta A. G. and the impossi-

bility of immediate liquidation, Kuhnlein paid nothing for these assets; he gave Cimon only a *Besserungsschein* [letter of promise to pay later if the situation should improve] of about fr. 231,500.00, with the understanding that any payments whatever for discharging this obligation would be made only if there was still a liquidation surplus after repayment of all obligations and particularly after the payment of additional capital contributions, which Kuhnlein himself might make. Liquidation proceeds exceeding the amount of fr. 231,500.00 would go entirely to Kuhnlein. Also made over to Kuhnlein were the participations of Parta in various companies—that is; the shares of Chehanij, Bayer, Remedies and Paris remained in the company. The *balance sheet of December 31, 1943*, is attached to the agreement.

1824 *q) Pension Claim of Hermann Schmitz of fr. 80,000.00.*

The investigation of the Clearing Office concerning the I. G. Chemie pension grant to Dr. Schmitz as per letter of February 10, 1937, showed that in spite of Mr. Schmitz's withdrawal a pension had never been paid to him and that Mr. Schmitz had never put forward such a claim until 1945, when Messrs. Linville and Golden turned over to the I. G. Chemie a slip of Mr. Schmitz in which the pension was mentioned for the first time. It also turned out that no reserves had been put aside for this claim, nor that any payment in favor of Mr. Schmitz had been placed in the pension fund from which the pension obligations of the I. G. Chemie were paid, or that his name had been included among those entitled to pension. President Iselin, Dr. Sturzenegger, Director Germann and the previous member of the Executive Board Dr. Gadow, agreed in the statements they made when they were interrogated that this obligation had likewise been eliminated with the cancellation of the dividend-guarantee and option agreement. They said that Hermann Schmitz had never been left in doubt

as to the outcome of this matter. Dr. Gadow stated that he had received knowledge of this letter from Mr. Roesch, but that Roesch had expressly stated that this pension was not the customary pension, not really a pension in the true sense of the word, but that this pension was connected only with the I. G. Farben and was to be so understood. He (Roesch) was also of the opinion that the withdrawal of Dr. Schmitz in consequence of the dissolution of the relations with the I. G. Farben was not in accordance with the conditions on which the pension could ever have been paid at all. It was said that this additional agreement had also been cancelled with the separation from the I. G. Farben.

During the negotiations on the separation of the I. G. Chemie from the I. G. Farben, lic. Gadow, had expressly stated to Dr. Schmitz that he had no claim to pension, first, because such an agreement had not been made by the Executive Board, the administrative board competent for such matters, and second, because this agreement also had been eliminated with the separation, and furthermore because the payment of such a pension to Dr. Schmitz, who had been active for the I. G. Chemie only on the side, could not have been defended from an economic or moral point of view.

Dr. Iselin in turn declared that he had received knowledge of this pension claim only in the summer of 1940 upon assuming the office of chairman of the Executive Board. He took the stand that what was here concerned was a statement of Messrs. Greutert and Roesch in the name of the I. G. Chemie, but that only the Executive Board would have been authorized to incur such an obligation, and that it was entirely inadmissible if the three men had come to an agreement among themselves. The majority of the Executive Board had never assumed this obligation. But in his opinion this additional agreement had also been eliminated with the separation from the I. G. Farben, and Dr. Schmitz had not been left in the dark about the matter. According to unvarying statements, Dr. Schmitz did not at

1825 that time protest against this interpretation but he accepted the information without a word.

Moreover, Schmitz would have had to declare his claim to the foreign exchange control offices, and, if he had really believed he had a right to such a claim, it is incomprehensible that he had not expressed it years before. The I. G. Chemie had expressly stated this to Dr. Schmitz in a letter of November 27, 1945. The existence of this pension is contested by the I. G. Chemie, and in view of the proceedings that have been described, this claim appears in any event to be very uncertain from a legal point of view.

1826. *r) Letter of April 5, 1939, of the I. G. Chemie with Regard to the Payment of $150,000.00 Annually to the I. G. Farben.*

On April 5, 1939, the I. G. Chemie informed the I. G. Farben that it was ready, by way of complaisance and without legal obligation, to pay the I. G. Farben $150,000.00 annually in place of the GAF, for which the I. G. Farben had to engage to make known and to turn over for utilization as heretofore all practical knowledge and improvements of processes to the GAF. But in spite of this letter, the I. G. Chemie never paid any amount whatever to the I. G. Farben. The interrogation of the leading men of the Executive Board disclosed that in reality no payment was made. The following considerations were the basis of the aforementioned letter:

Between the GAF and the I. G. Farben there existed special technical license agreements that were not known individually to the I. G. Chemie as financing company. Because of a lack of technical knowledge, the I. G. Chemie had never bothered very much about the technical aspect. There were no well-developed research laboratories in America either, so that the GAF had to rely on the technical assistance of the I. G. Farben. What payments from these license agreements were made direct to Germany cannot be ascertained at the I. G. Chemie and the men know nothing about the matter either.

The I. G. Chemie was then informed from America that technical orientation was becoming worse and worse, and the I. G. Chemie learned that particularly the German technicians within the I. G. Farben were of the opinion that the I. G. Farben was not sufficiently compensated for its constant advice and information on processes (the know-how). To all intents and purposes the technicians refused to make their latest processes and improvements properly known to the American companies. Technical difficulties arose in consequence of this attitude, for the American companies had the greatest interest in obtaining current technical information. In order to obviate this discord, the payment of an additional annual amount of $150,000.00 was considered.

For the most various reasons and after consultation with the American companies, the Executive Board of the I. G. Chemie decided in April 1939 to assume this obligation voluntarily until further decision, for the development and the welfare of the American companies lay above all in the interest of the I. G. Chemie.

It was subsequently called to the attention of the I. G. Chemie by America that in spite of the assurance of a payment of $150,000.00 the current information of the Germans was insufficient. The I. G. Chemie therefore decided not to make the first payment, which had to take place in January 1940. Since the payment had been promised without legal obligation and voluntarily, the payment was simply desisted from without informing the I. G. Farben of the matter.

1827 This was done for psychological reasons, too, for the negotiations concerning the separation of the I. G. Chemie from the I. G. Farben were taking place and it was desired to avoid complicating the situation and the negotiations by unnecessary discussions.

From these facts it may be seen that from license agreements (that is, from the cession of patents, processes, etc.) the I. G. Farben has rights in America which concern

companies belonging to the I. G. Chemie. If, in its letter of 12-19-41 to *Ministerialdirigent* [title] Dr. Landwehr, the I. G. Farben wrote at the bottom of page 2 that the I. G. Chemie was of great importance as the manager of very considerable American interests of its company in the GAF, it could have meant only these purely technical interests, if this passage of the letter was intended seriously, for by the control of the GAF by the I. G. Chemie these processes and patents were of course affected; and if the I. G. Chemie permitted that the GAF be improperly managed, license claims of the I. G. Farben would have been indirectly affected, or at least in the opinion of the I. G. Farben at that time, 1941.

c) Trustee agreements of 1939 through the N. V. Chemicalien Handels-Maatschappij (Chehamij), Amsterdam.

In the memorandum of the Joint Commission reference is made among other things to a letter of the I. G. Farben of June 26, 1939, in which the I. G. Farben deals with "measures for the purpose of safeguarding the shareholdings of its foreign selling companies". It is provided that Chehamij, a company in which neither Sturzenegger & Cie. nor I. G. Chemie have a direct participation, and the above-mentioned Voorindu assume the trust functions. It should be particularly recorded that this letter is dated of 1939, i.e., prior to the severance of June 1940. It should also be pointed out that the companies here involved are companies that were transferred from Voorindu to Chehamij. The investigations of the Compensation Office have disclosed the following:

Voorindu is owned by Osmon A. G., which is owned 100% by I. G. Chemie. For a while the shares of Voorindu were in one of the secretariat accounts of Greutert & Cie. The endeavor of Boisseyain, the manager of Voorindu, and especially of the management of the I. G. Chemie and Greutert & Cie., was directed towards relieving Voorindu of these trust transactions. This tendency appears also from

the letter of I. G. Farben itself, in which it is expressly stated that for internal reasons Voorindu would like to withdraw as a participant as well as a beneficiary of the options (page 7). Moreover, it appears that these trustee functions had been taken over by Voorindu many years ago. The transfer of these trust functions to Chehamij thus represents a relief of Voorindu.

1828 The inquirees of the Compensation Office as to whether Voorindu still exercises trust functions could not be answered by the gentlemen. They said that all the files of this company were in Holland and that, since the outbreak of the war, they had received only the most incomplete information on them. Voorindu, moreover, is in liquidation.

With regard to Chehamij, which took over the trust functions in 1939, it is alleged that Sturzenegger & Cie. has a controlling interest therein. This statement is not quite in keeping with the facts. Participants in Chehamij are the Mapro N. V. with 51% and the Int. Kantoor and the Parta S. A. with 24½% each. The Parta S. A. belongs entirely to Osmon, whereas the Int. Kantoor maintains no connections with either the I. G. Chemie or Sturzenegger & Cie.

Sturzenegger & Cie. participates with a small amount in the Mapro A. G. Shareholders of Mapro are the Amsterdamsche Bank with 20%, the Koopmann Bank with 9%, banker G. M. Fritze with 9%, the Greutert-Fritze consortium with 32%, the Hambros Bank with 20% and Greutert with 10%. Greutert & Cie. thus had holdings of its own only to an amount of 10%; however, Greutert & Cie. had the option right to twice fl. 16,000.00 Mapro shares until July 31, 1944. This option right elapsed without having been exercised. Sturzenegger, however, still has an unlimited fl. 8,000.00 option right. The investigations at Sturzenegger & Cie.'s have disclosed no close connections between Mapro and the Basle firm. Furthermore, Mapro

has no connections with any other persons from the I. G. Chemie-Greutert & Cie. group.

It cannot be said, therefore, that Mapro or Chehamij are controlled by Sturzenegger & Cie.

For the sake of completeness, it should be recorded that Greutert & Cie. placed an amount of fl. 12,000.00 at the disposal of the Greutert-Fritze consortium—that is, Fritze-Koopmans Bank.

b) Dividend guarantee in favor of the Swiss shareholders of Chehamij.

On being questioned by the Clearing Office, Dr. Sturzenegger admitted immediately that he had negotiated in Germany in 1939 in order to get a dividend guarantee for the Chehamij shares subscribed for by the Swiss. For the sake of completeness it may be said that these circumstances were known to us. This guarantee, which the I. G. Farben gave to Dr. Tobias Christ, is dated September 20, 1939. With reference to this matter Dr. Sturzenegger remarked that Parta had formerly (1939)

1829 participated in the capital increase of Chehamij only with reluctance, and that the Swiss had taken the stand that, if there was to be any question of a participation and the Swiss did not wish to have anything to do with the management of the business or the business policy of Chehamij, it was purely and solely a matter of a business investment for the Swiss in which an appropriate interest would have to be guaranteed. The dividend in favor of Parta, however, has never been paid without an express demand by the notary. This, too, is a transaction that took place before June 29, 1940, and which does not prejudice the agreement of separation.

Neither the I. G. Chemie nor Sturzenegger know anything about the further fate of this dividend-guarantee agreement, since after disposing of Parta to Kuehnlein they gave the matter no further thought.

III.

Trust Functions of Individual Men or Companies Which Still Continued to Exist After the Separation.

1. Rotopulsor.

Rotopulsor is a subsidiary of the N. V. Montaan-Metaalhandel, Amsterdam, which in turn belongs to the Metallgesellschaft, Frankfurt. Rotopulsor has nothing to do either with the I. G. Chemie or the I. G. Farben. Since Mollwo had previously worked for the Metallgesellschaft, he assumed the authority of a managing director many years ago—that is, almost since the beginning of Rotopulsor. Rotopulsor did not do a great deal of work. This authority was taken over by Mollwo at a time when the Metallgesellschaft was still a limited partner of Grenfert & Cie. by way of Messrs. Euler and Merton. The only large transaction that Rotopulsor wished to carry out at the time was the sale of certain participations of the Metallgesellschaft in America. But this transaction did not materialize.

Dr. Iselin, too, has been managing director of Rotopulsor for years. None of this work concerns the I. G. Chemie in any way.

When the investigation was made the management in due time declared Rotopulsor to be a German company.

1830 *2. Budanil A. G., Budapest.*

Budanil A. G. is a selling company of the I. G. Farben in Hungary. A portion of its shares is held in trust by Mollwo. On the occasion of the investigation of German assets, Mollwo punctually declared his trust functions to the Clearing Office without being called upon to do so.

This function, too, is one of long standing, which Mollwo continued to exercise as a favor but which has nothing to do with the I. G. Chemie.

3. Athanil Farben- und Chemikalienhandels A. G., Athens.

This company has no connection with the I. G. Chemie. A number of years before the separation of the I. G. Chemie from the I. G. Farben, Greutert & Cie. sold 100 Athanil shares in trust for the I. G. Farben to a Mr. Bertram in Athens, in connection with which the gentleman in question was granted a loan. Bertram engaged to sell the shares back again, with an offset of the balance of the debt. On the other hand, the I. G. Farben had the right to acquire these 100 Athanil shares. The matter was arranged by Greutert personally and in his name and was then taken over by Dr. Sturzenegger. This situation too was punctually reported to the Clearing Office at the time of the investigation.

4. Romanil, Aktiengesellschaft für Teerfarben und Chemikalienhandel, Bucharest.

The company is a selling company of the I. G. Farben. Its capital amounts to lei 5,000,000.00. In 1938, E. Greutert, Basel, held 1,500 shares in trust for the I. G. Farben. When Greutert died, Dr. Sturzenegger took over this function as trustee. No further connection exists; and particularly there is no connection between Romanil and the I. G. Chemie. We were punctually informed of this trust relationship by Dr. Sturzenegger. The blocked credit in the name of Sturzenegger & Cie., which has already been mentioned and which was given to Romanil, dates from 1931.

5. Basil Werder—Teerfarben und Chemikalienhandels A. G., Prague (Tefa).

Also mentioned in the memorandum of the Joint Commission is that Basil Werder took over the trusteeship of Tefa. The inquiries and investigations of the Clearing Office have disclosed that no files of any kind whatsoever with regard to this firm could be found either with the I. G. Chemie or Sturzenegger & Cie. or Werder. The in-

terrogation of Werder disclosed that the trusteeship had been offered to him, but that he had refused to work along the lines desired.

1831 *6. N. V. Defa Mij. voor Verstoffenhandel, Arnhem—Mollwo.*

Mollwo punctually (on August 15, 1945) reported to the Clearing Office the Hfl. 35,000.00 Defa shares managed by him in trust. This is an old function that he had taken over years before and which he was not able simply to give up.

7. Trafford Chemical Co. Ltd., England—Dr. Gadow.

There are no files on this company either with the I. G. Chemie or Sturzenegger & Cie. Messrs. Iselin, Germann and Sturzenegger did not even know this company. Upon being questioned, Dr. Gadow declared that he had previously received from attorney Hans Gierlichs for safekeeping the approximately 147,000 shares at 1lb. or the certificates, with the remark that he wanted to keep these assets from being seized by the Nazis. Gadow said he had given a receipt to Gierlichs only much later, after he had received, to his surprise, an inquiry from the I. G. Farben concerning the safekeeping of these assets. He said that on January 30, 1945, Mr. Frank Fahle took the certificates from him for Gierlichs, with which the matter for him was closed. Gadow exercised no functions whatsoever in this firm; he simply kept the certificates in his safe.

8. Trusteeship of Attorney Dr. Auer, Zurich, for Various Selling Companies of the I. G. Farben.

According to the memorandum of the Joint Commission, Sturzenegger personally is said to have participated in discussions in 1940 with regard to the cloaking of firms of the I. G. Farben in Latin America. No files on this matter could be found either with the I. G. Chemie or Sturzenegger & Cie. Upon being questioned, Sturzenegger declared that

in the spring of 1940, before the dissolution of the dividend-guarantee agreement, Dr. Rospatt, accompanied by another gentleman of the I. G. Farben, called on him about this matter. But he said that he expressly refused to take over such functions and named to them Attorney Dr. Auer in Zurich (who, so far as he knew, was to some extent related to Greutert), since he knew that attorneys took over such commissions. He said it was also possible that he had even transmitted to Dr. Auer a letter or two, but that he had had nothing to do with the entire matter nor had he ever inquired of Auer what had actually happened. Dr. Auer himself was active only as attorney in this matter and not, as is mentioned in the memorandum, as shareholder of Rigidor.

1832 It is asserted in this connection that Sturzenegger & Cie. served as the mailing address for the I. G. Farben. Dr. Sturzenegger was questioned in detail by the Clearing Office and protested most emphatically against such an assertion. With regard to the matter with Dr. Auer, he rightly pointed out that the negotiations for the cancellation of the dividend-guarantee agreement were carried on at that time and that it would have been tactically imprudent if he had turned the gentlemen out without having given them the name of an attorney.

For the same reasons, he said, he had forwarded one or two letters of the I. G. Farben.

In this connection the following findings of the Clearing Office during the examination of Sturzenegger & Cie. may serve: During the war a letter was delivered to Sturzenegger by the German Consulate General in which he was informed that he would be credited with a large sum which he should transmit abroad. Sturzenegger, as the Clearing Office was able to establish from the books, returned this credit.

In judging the various trust functions that continue to exist today, and which are exercised not by the I. G. Chemie but by the individual gentlemen, it should be taken into

consideration that these functions in all cases are such functions as the gentlemen in question have for years taken over as favors. Important also is that the companies in question were purely selling companies of the I. G. Farben which had no business dealings with the I. G. Chemie. These companies are of no importance for the entire complex of questions. All trust-functions have been punctually reported to the Clearing Office, and in no way was it attempted to conceal the relationship of trust.

We admit that it would have been better if the individual men had given up these functions with the cancellation of the dividend-guarantee agreement. But it must be considered, on the other hand, that the I. G. Chemie and the I. G. Farben did not separate in consequence of a quarrel and that precisely such favors, which materially were of no importance, facilitated a reasonable settlement. It was also stated personally that the individual gentlemen would not have considered it proper simply to have given up these unimportant trust functions. The Clearing Office is of the opinion that the conclusion should not be drawn from these incidental trust functions that further ties still exist between the I. G. Chemie, or its head men, and the I. G. Farben, which are prejudicial to the agreement of separation.

1833 IV.

1) Shareholdings of the I. G. Chemie and Greutert & Cie. Sturzenegger & Cie. at The Deutsche Laenderbank (DLB).

Greutert & Cie. had a block of 122,453 DLB shares in its portfolio as early as 1924. From June 30 to December 1924 Greutert & Cie. purchased in several blocks a further number of 447,000 shares from the Badische Anilinwerke in Ludwigshafen, the Heydt-Kontor in Berlin, and the Ammoniakwerke in Merseburg, so that 569,453 shares were in the ownership of Greutert & Cie. at the beginning of 1925. All the purchases were made with paper marks

which means for a Swiss bank at a very cheap price, computed in Swiss francs. At the beginning of 1925 the conversion into reichsmark securities yielded a nominal value of RM 3,796,353.00. In 1930, Greutert & Cie. sold RM 2,500,000 shares to the Ettlg. Bank for a price of RM 3,198,400.00. Greutert & Cie. meanwhile had purchased and sold various such shares. For instance, Greutert purchased RM 4,979,000.00 DLB shares 25% paid; at the end of 1936 they were fully paid. As of December 31, 1936, Greutert & Cie. owned RM 6,262,400.00 DLB shares. 2 mill. of them were sold to the I. G. Chemie in 1937. The number of such newly acquired shares was 99,400 shares net, so that Greutert & Cie. owned RM 4,363,800.00 DLB shares as of December 31, 1941. On the occasion of the formal increase of the DLB capital in 1942, Greutert received gratis shares of a value of nom. RM 2,209,200.00, so that as of January 31, 1946, Greutert & Cie. had holdings of these shares in an amount of RM 6,573,000.00. The German foreign exchange regulations prevented Greutert & Cie. from bringing these shares into Switzerland. With regard to the I. G. Chemie's DLB shareholdings, this company acquired RM 2,000,000.00 from Greutert, and in consequence of the formal capital increase acquired a further RM 1,000,000.00 in gratis shares, so that the I. G. Chemie today owns RM 3,000,000.00.

The inquiries and investigations of the Clearing Office have disclosed that the holdings of Sturzenegger & Cie. as well as those of the I. G. Chemie are their free and uncontrolled property and that these shares are not encumbered with any right, right of repurchase, option right, etc.

The previous efforts of Sturzenegger & Cie. and the I. G. Chemie to have these shares, also included in the compensation of 1936-37 unfortunately came to nothing, since the foreign exchange control offices refused to extend these transactions to include shares.

2) Liquidation of the participation in Winnica, Poland.

Winnica was established by Kuhlmann, Paris, and the I. G. Farben with a capital of zl. 500,000. Both companies participated to an extent of 50%.

1834 In 1935 the I. G. Chemie acquired the I. G. Farben interest for Sfr. 584,099.15. Until 1942 the I. G. Chemie wrote down this participation to fr. 1.00. Winnica's capital was meanwhile increased to zl. 1,500,000.00. The I. G. Chemie acquired 50% of this capital. In 1941 the I. G. Farben appears to have purchased the interest of the Kuhlmann firm. In 1943 the I. G. Chemie sold its Winnica shares for fr. 800,000.00 to the Disconto-Kredit A. G., Zurich. The selling price seems to have been reasonable in comparison with the purchase price. Who in the end was the purchaser of these shares is not evident from the *correspondence with the Disconto-Kredit A. G.*; however, upon being questioned, the gentlemen stated that in all probability Disconto-Kredit made the purchase for the account of the I. G. Farben.

3) Participation in the Axe Trading Co.

Stürzenegger & Cie. participates with 21,000 shares in the Axe Trading Co. 3,000 shares were purchased originally and later a further 7,200. In consequence of a formal increase a further 10,800 shares of this company were allotted to Stürzenegger & Cie. According to information received this participation was interesting from the point of view of the proceeds. Besides its regular financing business the firm's particular work lay extensively in carrying out transactions concerned with the international nitrogen agreement. Stürzenegger & Cie. had nothing to do with the management of the firm; it received simply the regular annual reports.

V.

Connections With Consul General von Haeften.

No business connections whatever between the I. G. Chemie or Sturzenegger & Cie. with von Haeften could be ascertained. Dr. Sturzenegger stated that he had met Consul General von Haeften two or three times in a social way, but that he never had sent any invitation to him nor had he ever received one from him. Dr. Gadow said that he too had associated only in a social way with von Haeften, since, as a German in Switzerland and in consideration of his relatives in Germany, he had been forced to keep up his association with the Consul General along general lines. If he had not done so he would have had to expect that his passport would not have been extended and the documents would have been taken from him, so that his position and that of his family would have been almost impossible. But he had tried, he said, to restrict the association as much as possible to a social point of view.

1835 Dr. Gadow said that he had never had business discussions with von Haeften and that it was consequently incomprehensible to him how von Haeften could have written to the Foreign Office about the events in the I. G. Chemie. He must have received his information from the newspapers and the reports of the general meetings. He added that it should not be overlooked that from time to time von Haeften had to submit reports to the Foreign Office in such a way as to place his usefulness and significance in the proper light.

VI.

Dr. Gadow's Naturalization.

Dr. Gadow denies most emphatically that he had filed his application for naturalization at the wish or instigation of the I. G. Farben. On the contrary, he says, he had never told anyone of this application, and von Haeften's

assertion is therefore untrue. The investigation of the naturalization files of Gadow has shown that the reason Gadow was not naturalized was not because of personal considerations or his political attitude but because the naturalization regulations were changed in general, and Gadow consequently withdrew his application.

1836 **Exhibit D.**

[This exhibit is Defendants' Exhibit 549 to the deposition of Hans Sturzenegger and is printed at R. 14709, *infra*.

1840 Filed January 25, 1949. Harry M. Hull, Clerk.

Supplemental Memorandum in Support of Plaintiff's Motion Under F. R. C. P. 34 and in Opposition to Defendants' Motion.

Plaintiff's motion under F.R.C.P. 34 complies fully with the rule as to the designation of documents, which counsel for defendants has stated under oath are in certain files in defendants' possession and that they constitute evidence relevant to the subject matter involved in the pending action. Defendants' memorandum in opposition does not deny any of these claims. In fact, the merit of plaintiff's motion is in effect conceded. On the other hand, defendants by their several counter-motions seek first to delay action thereon and secondly, sweeping discovery of "all documents, not privileged" in defendants' possession, custody or control and in addition, all documents of Osmon A. & and Sturzenegger & Cie, alleged subsidiaries of plaintiff. The demand for this discovery seems to be based not upon Rule 34 but upon defendants' conception of what they call "reciprocity" or "fair play."

It is plaintiff's position that plaintiff's motion for discovery under Rule 34 and defendants' counter-motions are not at all related.

1841 Plaintiff's right to prepare itself for the trial of this case should not be delayed because defendants do not think that this is an appropriate time to permit inspection by the plaintiff. Furthermore, plaintiff's right comes strictly under the provisions of Rule 34 and is not challenged by defendants; on the other hand, defendants' claim to reciprocity makes demand for every document that the plaintiff has, whether relevant or not, and documents that it does not have, and are admittedly in the possession of other persons or entities. Plaintiff denies that defendants' motion complies with Rule 34 or any other rule, and insists that its conceded right under Rule 34 should not be delayed by reason of defendants' counter-motions.

We pass to defendants' claim to reciprocity. What do the defendants claim as a basis for their motion? Here are some pertinent excerpts from their memorandum:

> "Shall the plaintiff have a production of documents without any reciprocal right on the part of the defendants? We believe that this would be unconscionable and that the right should be mutual.
>
> * * * * * * *
>
> "We seek production of all of plaintiff's documents, not only because turnabout is fair play but because we believe that the entire existence of the plaintiff has been one of association with I. G. Farben and, in wartime, of relations with the enemy and of activities behind the enemy lines."

This does not constitute a showing of cause as required by Rule 34 and does not comply with the other requirements of that rule. What those other requirements are were clearly stated by Judge Schoonmaker in *Condry* v. *Buckeye S. S. Co.*, 4 F.R.D. 310:

> "We have many times had occasion to construe this rule. As we construe it, the plaintiff must: (1) Designate
>
> 1842 the documents; (2) show facts from which the court may conclude the documents constitute or contain evi-

dence material to the matters involved in the suit; (3) show that the documents are in possession, custody, or control of the defendant."

Defendants have not complied with any of these requirements. They have not designated the documents; instead, they ask for "all documents." They have not shown facts from which the Court may conclude as to the relevancy or materiality of documents and that is necessarily true because of the sweeping character of the demand. Finally they have not shown that the documents demanded are in the possession, custody or control of plaintiff, and the motion specifically asks for documents in the control of other persons. For instance, by reference to page 3 of the affidavit in support of the motion it may be seen that defendants are seeking more than 55,000 documents shown by their own affidavit to be in the possession of Sturzenegger.

It is clear from Form 24 contained in the Federal Rules of Civil Procedure with respect to motions under Rule 34 that it was intended that the documents be specifically described. In numerous decisions, the courts have adhered to this requirement of specific description. In refusing a similar demand in *Sonken-Galamba Corp.* v. *Atchison T. & S. F. Ry. Co.*, 30 F. Supp. 936, 2 F.R.S. 34.31 (Case 2), the Court commented thus: "The documents sought in these motions are described in such general omnibus language that they are not 'designated' at all." A similar thought was expressed by the Court in *Kennedy* v. *Texas Co.*, 29 F. Supp. 562, as follows:

> "It was surely not intended by the use of the word 'designated' to permit a roving inspection of a promiscuous mass of documents, etc. thought to be in the possession, custody or control of the opposing party."

1843 Another case setting forth the same doctrine is *Floridin Co.* v. *Attapulgus Clay Co.*, 26 F. Supp. 968, 1 F.R.S. 34.41 (Case 6), in which the Court stated:

"(34.41) It is submitted that it is not the intention of the Rules of Civil Procedure to open all of a party's records to the other party on the vague chance that they may contain some material that is relevant to some theory advanced by the other party. Such an investigation of defendant's records is not necessary to the proof of such theory and it is unreasonable to require the defendant to produce all such records and disclose them to plaintiff together with the secret information contained in them."

Other cases to like effect are *Thomas French & Sons, v. Carleton Venetian Blind Co.*, 30 F. Supp. 903; *Hillside Amusement Co. v. Warner Bros.*, 8 F.R.S. 34.41 (Case 5).

A case even closer in its actual facts, to the present is *United States v. Schine Chain Theatres, Inc.*, 5 F.R.S. 34.11 (Case 4), a copy of the opinion of which, for the convenience of the Court, is attached to this memorandum. This was an action under the Anti-trust laws brought by the United States, in which it demanded discovery of all documents in the possession of defendant. As shown in the opinion, the Court denied the motion, holding that the demand was too sweeping and not within the purview of Rule 34.

We submit that it is very clear that defendants have not made a sufficient designation of the documents.

The assertions in the affidavit deal not with the relevancy or materiality of any alleged documents, but seem to be based upon this thought: We have a good case against plaintiff and therefore, we ought to see everything they have, so we can prove it. . . .

1844 not based on personal knowledge of affiant. It consists almost entirely of hearsay, specious innuendo, and argument. It cannot be answered because no facts are set out concerning the basic issues herein pre-

sentod, namely, relevancy and the showing of *cause*. For this reason we will not dignify it by filing a counter-affidavit dealing with the things discussed therein.

This is the second affidavit of this character filed by Mr. Schwartz in this proceeding. We seriously state to the Court that defendants' attorneys, and especially Mr. Schwartz, do not seem to appreciate the nature and function of an affidavit nor the sanctity and effect of the oath taken with respect to the affidavits herein referred to. Furthermore, if this practice continues we believe the Court should stop it by disciplinary action or otherwise.

It is submitted that the assertions in the affidavit do not furnish a basis or a showing of cause for the blanket claim and demand of defendants to inspect, etc. all documents of plaintiff.

We have previously pointed out in this memorandum that defendants' demand includes documents of two companies alleged in the motion to be "subsidiaries of the plaintiff". When this assertion is compared with page 3 of the affidavit, it clearly appears that defendants do not contend that Stuzenegger & Cie is a corporation wholly owned or controlled by plaintiff. It merely describes the company as "a banking house very close to I. G. Chemie." At the top of page 4 it is claimed that plaintiff is a partner in the firm. This allegation, even if true, is substantially different from the assertion in the motion that the firm is a subsidiary of the plaintiff. Likewise, the affidavit does not accurately describe the relationship which is more in the nature of an investment status than one of operation and control.

It is our understanding that under the Swiss law Stuzenegger & Cie is a kind of partnership. There is an un-

limited or general partner (Dr. Hans Sturzenegger) and a limited or special partner (Industrie Bank, A. G.). In these respects, there is similarity to an American type of partnership except that a corporate partner, limited or unlimited, is not generally

1845 permitted under our law. These two names appear in the Commercial Register, as required under Swiss law. On the other hand, plaintiff has, and under the Swiss law is permitted to have, an investment in the capital of the partnership. This is known as a "stille beteiligung" or sleeping inactive-passive participation, and plaintiff is called a sleeping partner. However, it does not have the status of a partner as we know the term in America. It is more like a creditor, although when the business is profitable, it participates by way of a dividend. It does not participate in the business management of the firm, but has a minority voice (one vote out of five) in a narrow sphere wholly unrelated to the problems presented here. It cannot be compared, substantially or otherwise, with any American concept of a business or legal entity, status or relationship. Moreover, its name does not appear in the Commercial Register as a participant in the firm, and under the Swiss law it is not required so to appear.

Regardless of the relationship between plaintiff and these other entities, it is well settled from the language of Rule 34 and from its uniform construction that it is applicable only to a "party" to the cause. These entities are not within the scope of Rule 34. The question whether documents of subsidiaries could be reached under the rule was specifically considered and denied by the Court in *Steward-Warner Corp.* v. *Sliney*, 4 F. R. D. 333, 8 F. R. S.

34.11 (Case 4). To like effect, see *Orange County Theatre* v. *Levy*, 26 F. Supp. 416, 417.

Furthermore, there is nothing in defendants' affidavit t show that the documents are in the possession, custody o control of plaintiff and therefore, there is no real basi for any claim that they can be reached under Rule 34.

Plaintiff does not have the actual possession or custod of the records of Sturzenegger & Cie, and we submit tha it does not have control in a legal sense. Plaintiff an Sturzenegger & Cie do not occupy joint offices, nor eve offices in the same building, and they do not have th same custodians or depositories of their respective prop erties and records.

1846. On the question of control, the relationship o plaintiff and Sturzenegger & Cie is not such tha the plaintiff could produce the records of Sturzenegger & Cie, without the acquiescence of Dr. Sturzenegger and In dustrie Bank A. G. In other words, plaintiff cannot wal into the files, safes and other depositories of Sturzenegge & Cie, and produce records in compliance with an orde for such issued under Rule 34. Moreover, in an ordinar American partnership, even a general partner does no have possession or control of partnership assets. In th absence of special agreement, however, neither partne separately owns, or has the exclusive right of possessio of any particular articles of partnership property", 4 Am. Jur. 210, § 115.

Even if plaintiff had some record or document of Stu zenegger in its possession or custody, (which is not con ceded), it is believed that such possession or custody woul be that of the partnership and not that of plaintiff, so as t make it subject to Rule 34. Such possession or custod

would not be that of a *party* to the action, but that of a distinctly different entity. To illustrate, if a person were sued as an individual, it would hardly be contended that he could be required to produce the records of Corporation X, simply because he happened to be its Secretary.

With respect to documents in the possession of persons, not parties, defendants have no remedy under Rule 34 but may take the depositions of such persons under Rule 26. As stated by the Court in *Eastern States Petroleum Co. v. Asiatic Petroleum Corporation*, 27 F. Supp. 121, 122:

> "Rule 34 deals with discovery and inspection of documents independently of deposition. By that rule only documents in possession or control of a party to the action may be reached. But it seems plain that by virtue of other rules, Rule 26 and Rule 45, inspection of documents in possession of one who is not a party may be ordered as an adjunct to the deposition of the person who has the documents."

1847 We do not mean to argue that the defendants are not entitled to discovery of any of plaintiff's documents. Discovery should be permitted if and to the extent that they comply with the Rule, but not otherwise. Their claim that they should have "not less than all", asserted to avoid the requirement of the Rule that they should *designate* the documents of which discovery is sought, does not stand up against critical scrutiny.

The defendants vested the plaintiff's property upon the ground that it was an enemy. The evidence which the defendants possess is supposed to support such vesting. Naturally, the plaintiff is entitled to examine such of that evidence, claimed to support the vesting, as it has designated. Good cause therefor, aside from other reasons, is

that it might be taken by surprise and it cannot get this evidence by any other means.

The defendants presumably need no more evidence. Surely, they do not make out a convincing case for a search warrant, a drag-net, or a fishing expedition, as an attempt to sustain their taking of plaintiff's property. Every memorandum that their counsel have filed in this Court boasts and brags about their evidence and its great strength and breadth and weight.

It is plain that they do not expect to establish plaintiff's non-enemy status by discovery procedure. They pretend to bolster their own case. They do not claim now to lack evidence to sustain their contentions. They are not in a desperate situation where they cannot prepare for trial without this discovery. And, from their point of view, they do not anticipate being taken by surprise for they expect plaintiff's evidence to corroborate their own.

We repeat that we are not arguing that on a proper demand, good cause may not be shown for the production of certain documents. But, we say that defendants' lately-

timed motion is a paradox. They do not seek to

1848 satisfy the requirement of the Rule as to designation because they make no designation at all; and they openly bypass the requirement of good cause by showing that they have no need for the records.

Let us be frank. In their zeal to defeat another move of the plaintiff, defendants blundered into the tendering of some 23000 documents to the plaintiff under the Rule; and they seek to bail themselves out by an appeal to reciprocity. But true reciprocity here demands that they *designate*, as the plaintiff has designated.

There is no difference between demanding that a party,

produce all documents that are relevant and that it produce all documents because they are relevant. In each case, the requirement of relevancy is met by lip-service, but in both cases the Court, without more, undoubtedly would refuse the demand. The other elements of the rule, *equally important*, are ignored.

While plaintiff feels that it is unnecessary to frame an issue of fact in order to dispose of this simple question, it will not close this discussion without stating that, even measured through the defendants' sights, relevancy of *all* of plaintiff's records is hereby denied.

The proposed raid upon the plaintiff should not be permitted.

[signed by counsel for plaintiff]

1854 Filed February 18, 1949. Harry M. Hull, Clerk.

Supplemental Memorandum in Support of Defendants' Motions.

1858 When we made the motion we understood that the plaintiff and H. Sturzenegger & Cie. were close but we did not appreciate how close they were. During the deposition of Hans Sturzenegger, now continuing, the following facts have appeared, or have been confirmed, which, we think, demonstrate not that the plaintiff is the parent of the Sturzenegger firm, or vice versa, but that the two are as intimate as the two halves of an uncut apple—that they are one and the same.

I. I. G. Chemie, the plaintiffff, as of 1943, had a 44% participation in Hans Sturzenegger & Cie;

and as of today, this participation amounts to 18%. (Schwartz affidavit, p. 4 [R. 1714], Tr. 1059 [R. 7497], Tr. 1102 [R. 7540], Ex. 18 to the transcript [R. 12595]).

2. H. Sturzenegger & Cie. and the circularly owned firms in the Sturzenegger-Chemie Complex, together own a large block of stock in I. G. Chemie (Tr. 1104-17 [R. 7542-7555]). Specifically they own all of the 100,000 shares of preferred and about 36,500 shares of the total issue of 250,000 shares of common. (Tr. 1106-7 [R. 7544-7545], Tr. 1109 [R. 7547], Tr. 1110-47 [R. 7548-7585]).

3. The two firms have had, and have, leading personnel in common, not the least of whom is Mr. Sturzenegger himself. (Tr. 15 [R. 6451], Tr. 53-5 [R. 6489-6491], Tr. 120 [R. 6556], Tr. 183 [R. 6619]).

4. Until about 1935 the two firms occupied joint premises (Tr. 8 [R. 6444]), and since 1935 they have occupied adjoining small buildings. (Tr. 18 [R. 6454], Tr. 186-7 [R. 6622-6623]).

5. Mr. Sturzenegger, during a period when he was an officer, director or employee of I. G. Chemie, frequently represented the plaintiff in matters of importance. (Tr. 28-36 [R. 6464-6472]).

1859

6. Mr. Sturzenegger has testified that I. G. Chemie and his private bank were so close that he might well have discussed with the leading people of the plaintiff a request his bank received in 1943 from I. G. Farben, through the German Consulate General, to forward a million Swiss francs to Spain for I. G. Farben. (Tr. 696-7 [R. 7432-7433]).

7. The files of I. G. Chemie and Sturzenegger have been commingled (Tr. 182 [R. 6618]), and the files of one may at times be physically located on the other's premises, as the work to be done on the file demands. (Tr. 185 [R. 6621]).

8. Most, and perhaps all, of the securities in I. G. Chemie's portfolio are physically deposited with the Sturzenegger firm. (Tr. 253 [R. 6689]).

9. Mr. Sturzenegger testified that the greatest part of the securities bought by plaintiff, a holding company, was purchased through the Sturzenegger firm. (Tr. 32 [R. 6468]).

10. Mr. Sturzenegger has admitted that I. G. Chemie transferred to H. Sturzenegger & Cie. large amounts of its funds. These funds were used to purchase securities which were and are administered by the Sturzenegger firm, and do not appear on Chemie's records. (Tr. 88-92 [R. 6524-6528], 95-101 [R. 6531-6537]).

11. Mr. Sturzenegger has several times characterized the connection of the two firms as very close (e.g., Tr. 54 [R. 6488], 696-7 [R. 7132-7133]).

[Signed by counsel for defendants]

1934-1952 Filed March 9, 1949. Harry M. Hull, Clerk.

Answer.

[The Answer appears in this Record in the consolidation of the answer and the counterclaims which is printed at R. 2157, *infra*.]

1971-1986 Filed April 1, 1949. Harry M. Hull, Clerk.

Contracts of Partnership, Greutert Sturzenegger.

[These contracts are Plaintiff's Exhibits 11-15 to the deposition of Hans Sturzenegger, and are printed at R. 17174-17193, *infra*.]

1987

Filed April 1, 1949. Harry M. Hull, Clerk.

1987 **Cable Filed by Plaintiff in Opposition to Defendants' Motion Under F. R. C. P. 37.**

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815 FIFTEENTH STREET WASHINGTON/5/DC

I WALTER GERMANN MANAGING DIRECTOR OF INTERHANDEL HEREBY CERTIFY AS FOLLOWS THE BOOKS FILES DOCUMENTS PAPERS AND RECORDS OF THE FIRM OF H. STURZENEGGER AND CIE ARE NOT NOW AND HAVE NOT BEEN IN THE POSSESSION CUSTODY OR CONTROL OF PLAINTIFF

1988 EITHER ACTUALLY OF CONSTRUCTIVELY PERIOD THEY ARE IN THE ACTUAL AND PHYSICAL POSSESSION AND CUSTODY OF HANS STURZENEGGER THE PARTNER WITH UNLIMITED RESPONSIBILITY AT THE FIRMS PLACE OF BUSINESS AND HE HAS COMPLETE CONTROL OVER THEM PERIOD PLAINTIFF DOES NOT HAVE JOINT OFFICES WITH H. STURZENEGGER AND CIE AND DOES

1989 NOT HAVE PHYSICAL OR LEGAL ACCESS TO THEIR FILES OR RECORDS PERIOD PLAINTIFFS POSITION IN RELATION TO THE FIRM IS SUCH THAT IT DOES NOT HAVE NOR COULD IT ASSERT ANY CONTROL WHATEVER OVER SUCH RECORDS AND FILES SEMICOLON IT COULD NOT OBEY AN ORDER TO PRODUCE THEM NOR COULD

1990 IT COMPELL HANS STURZENEGGER TO PRODUCE THEM PERIOD PLAINTIFF IS NOT EVEN ENTITLED TO INSPECT THE BUSINESS BOOKS AND PAPERS OF THE FIRM

WALTER GERMANN

1991 Filed April 8, 1949. Harry M. Hull, Clerk.

Affidavit.

Swiss Confederation.)
Canton and City of Basel) ss:
Consulate of the United)
States of America)

Walter Germann, being first duly sworn, on oath deposes and states as follows:

1. That he is the manager of the plaintiff corporation.

2. That the books, files, documents, papers, and records

of the firm of H. Sturzenegger & Cie. are not now and have not been in the possession, custody or control of plaintiff either actually or constructively. That they are in the actual and physical possession and custody of Hans Sturzenegger, the partner with unlimited responsibility at the firm's place of business and that he has complete control over them. That plaintiff does not have joint offices with H. Sturzenegger & Cie. and does not have physical or legal access to their files or records. That plaintiff's position in relation to the firm is such that it does not have nor could it assert any control whatever over such records and files; that it could not obey an order to produce them nor could it compel Hans Sturzenegger to produce them. That plaintiff is not even entitled to inspect the business books and papers of the firm.

/s/ Walter Germann.

[Sworn to April 1, 1949.]

2015. Filed May 10, 1949. Harry M. Hull, Clerk.

Reply to Counterclaim.

First Defense

Said counterclaim fails to allege a claim against the plaintiff upon which relief may be granted.

Second Defense

1, 2. Plaintiff is not required to reply to the first and second paragraphs of said counterclaim. However, plaintiff denies that the counterclaim constitutes an action, "in the name of the United States," as required by 26 U. S. C., Section 3744.

3. Plaintiff says that it has seen a copy of a document dated November 8, 1929, appearing to have been executed by Standard Oil Company of New Jersey, as one party, and by Hermann Schnitz, who signed as attorney in fact for plaintiff, as the other party; but plaintiff alleges upon information and belief that if this constituted execution by

the plaintiffff, which it does not concede, plaintiff was caused by the said Schmitz to act in a nominal or straw capacity for I. G. Farben in relation to a phase of a transaction which the said Schmitz was at the moment consummating on behalf of the said Farben with certain Standard Oil Companies. Plaintiff has no

2016 information or knowledge sufficient to form a belief as to the truth of the averments that on November 22, 1929, the plaintiff performed and discharged the alleged contract in the City of New York, New York, or that the plaintiff delivered to the Standard Oil Company three copies of the so-called Four Party Agreement and one thousand shares of the Atlantic Binger Company stock; and upon information and belief, plaintiff says that if the matters recited in said alleged contract to be done by the plaintiff were in fact done, they were so done by the said Schmitz actually acting for Farben but pretending to act for the plaintiff and using plaintiff or plaintiff's name as a mere nominee or straw for the purpose. Plaintiff denies that the said Standard Oil Company transferred and delivered one thousand shares of the Old Shares Investment Company stock to plaintiff in exchange and consideration for the alleged performance of said contract by the plaintiff. Further, plaintiff says that the said Hermann Schmitz was not empowered or authorized to act for it in any phase of the transaction referred to in the third paragraph of said counterclaim, and therefore plaintiff did not participate in any of the transactions alleged therein. Plaintiff denies all averments of said paragraph 3 not hereinbefore expressly admitted.

4. Answering the fourth paragraph of said counterclaim, plaintiff asserts that it had no right or interest in the so-called four party agreement and no basis of cost therefor, and further denies that the fair market value of the Old Shares Investment Company stock was as alleged. To the extent that defendant bases the value of the Old Shares Investment Company stock upon the number of shares of

ndard Oil Company stock owned by Old Shares Investment Company, plaintiff asserts that it would have n impossible to dispose of such a large block of shares hout depressing the current market and quoted price said shares. All the other averments of said paragraph re denied.

. Answering the fifth paragraph of said counterclaim: intiff denies that it had any gain from the so-called 30 exchange", as alleged therein, and says that it was not required to pay any income tax or to file any income tax returns in connection therewith, as alleged in said paragraph. Plaintiff denies that it eived any dividends from Old Shares Investment Company for the years 1932 and 1933; and says that the amount such dividends as were paid to it during the years 1930 1931 was not taxable to it because plaintiff was entitled, under the provisions of Section 23(p) of the Revenue of 1928, to deductions in the amount of said dividends. intiff admits that it did not file tax returns for the rs 1930 and 1931 in relation to such dividends, but says it was not required to do so, or that its omission to so was immaterial because it had no tax liability thereand it was not for the purpose of evading or concealing such liability. If material to do so, however, plaintiff, lers itself ready and willing to file tax returns in reet of such dividends, in which returns deductions would taken for the full amount of such dividends as allowed law. Further, plaintiff says upon information and belief that the amount so received by it during the years 0 and 1931 was paid to it by I. G. Farben as compensaon for services rendered to the said I. G. Farben in ope, and not as dividends upon stock, and, therefore, ot income taxable by the United States. All the other rments of said paragraph five are denied.

. All the averments of paragraph six of said counterm are denied.

. 8, 9. Plaintiff has no information or knowledge suf-

ficient to form a belief as to the truth of the averments of the seventh, eighth and ninth paragraphs of said counterclaim.

10. Plaintiff admits the making of the assessment and demand alleged in paragraph ten of the counterclaim, and the fact that it has refused to pay any part thereof. Plaintiff denies that it owes or is liable for any part of said assessment, taxes, penalties and interest; denies that any part thereof is valid, legal, due or proper; denies that the United States of America has, or has a right to claim, a valid lien on plaintiff's property,

2018 as alleged in said paragraph; has no information or knowledge as to the notification by the Commissioner of Internal Revenue to the defendant Clark averred in said paragraph; and denies that the United States of America is entitled to judgment for the amount of said counterclaim or for any part thereof.

11. Plaintiff denies each and every allegation contained in said counterclaim not hereinbefore expressly admitted.

THIRD DEFENSE

Herein repeating its denial, as aforesaid, that it owes any of the taxes, penalties and interest set forth in said counterclaim and claimed by the United States of America for the first time in February of 1949, plaintiff says that if it had any liability, the United States is barred by limitations from asserting any part of its counterclaim. The intent and purport of this defense is to plead every available statute of limitation against said counterclaim and the assessments, taxes, penalties and interest therein alleged, and each and every part thereof.

[Signed by counsel for plaintiff].

2019 Filed June 23, 1949. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

C. A. No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC.,

Plaintiff,

vs.

TOM C. CLARK, ET AL.,

Defendants.

Memorandum Opinion.

This cause came on for hearing upon the following motions: (a) of Plaintiff: to order the defendants to produce and permit the inspection, copying and photographing of approximately 23,000 documents in their possession said to be relevant to the above-entitled case, and (b) of Defendants: (1) to order plaintiff to produce for inspection, copying and photographing all documents, not privileged, in its possession, custody or control relevant to the above-entitled case (these are said to consist of approximately 50,000 papers and documents situated in Switzerland); and (2) that a Judge of this Court be designated to hear, determine, and superintend all matters in this case preliminary to trial.

There were two oral hearings in regard to these motions. At the first, it was represented that Hans Sturzenegger, one of the witnesses whose depositions previously had been authorized to be taken by defendants, had been under examination for eleven days; that during the course of this examination there was prolonged questioning concerning a large number of papers and documents entirely unfamiliar to and not in anywise connected with the deponent; that many of the papers deponent was being shown and questioned

2020 about related to events occurring twenty or more years ago; that on advice of plaintiff's counsel, the deponent had not answered a number of questions asked him; and that in all probability the examination of this one witness would continue for many additional days and possibly weeks. At this hearing, in view of these statements, the Court announced the taking of depositions would be continued until further order and that to expedite the taking of depositions, the defendants should make available to the deponent Sturzenegger any document to be exhibited to him during the further taking of his deposition, in respect of which it was claimed he was author or had any contact. The Court stated it would grant the respective motions of the parties to inspect documents. Counsel were instructed to submit proposed orders in accordance with the announced decisions.

It was after submission of the proposed orders that the matter was set down for further oral hearing. At this time the principal points discussed were with regard to the granting of defendants' motion to inspect and copy documents abroad and whether the inspection, if granted, would be permitted to be made simultaneous with plaintiff's inspection of defendants' documents in this country. At this hearing it was pointed out that the motion of plaintiff for the inspection and copying of papers and documents was not solely for the benefit of the deponent Sturzenegger, but was intended to afford plaintiff discovery under Rule 34 of the Federal Rules of Civil Procedure. This undoubtedly is correct. However, the Court is of the opinion that the deposition of Sturzenegger, as well as the deposition of the other witnesses previously authorized by the Court, will be greatly expedited if the examination by plaintiff of defendants' documents is completed before the taking of the

2021 depositions is resumed. Accordingly, the deposition of the witness Sturzenegger, heretofore authorized to be taken by defendants will be suspended, with right to

be resumed twenty days after completion of the inspection and copying of documents by plaintiff which will be permitted.

As stated at the first oral hearing, plaintiff's motion for discovery will be granted with regard to the papers and documents in the possession of defendants. These papers are at the Department of Justice in Washington, D. C. and counsel for defendants have indicated they are relevant to the issues in this case. Any papers or documents which consist only of memoranda prepared by any employee or agent of a United States Government Department or of an Allied Government, including statements given to, or taken by, such an employee or agent, will not be required to be produced.

With regard to defendants' motion for discovery of the documents in Switzerland, plaintiff maintains the designation of the papers and documents is insufficient, that there is no showing they constitute or contain evidence relating to the issues involved in this suit, or that the papers and documents are in its possession, custody or control. I find, as argued by plaintiff, that in many cases, the Courts have required a reasonably well defined designation of the documents and papers. But in these cases, it has appeared that all of the documents of the party would not be likely to have some relation to the issues involved. The case at bar differs in this regard from the cases cited by plaintiff. Here the claim of the defendants is that plaintiff was enemy owned, controlled and tainted at the time its property was vested, and that long before the vesting, plaintiff had sought to conceal the true facts of its ownership and control by the use of

2022 subsidiaries and affiliates in various parts of the world. In such a case every record of plaintiff, as well as of its subsidiaries and affiliates, may have a tendency to prove or disprove such claims of defendants.

The Court therefore adheres to its previously expressed view that full discovery should be made.

As to plaintiff's claim that it is not shown to have possession, custody or control of the papers and documents sought to be inspected and copied, the Court finds a prima facie case of control by plaintiff is made out. If it develops that plaintiff, after bona fide efforts to obtain access to records of its subsidiaries, affiliates and others in which plaintiff has an interest, is unable to produce them as ordered, the question of whether further action should be taken by the Court may be considered.

I have concluded the authorized inspection and copying of all records should be made in the presence of counsel for or other representatives of both parties and that the inspection and copying should not be simultaneous as requested by defendants. The presence of counsel for both parties when the inspection and copying is being made may well facilitate the reduction of the time of preparation and trial of this case, an object greatly to be desired.

The matter of the designation of a judge of this Court to hear all preliminary motions and proceedings arising in this cause appears to have merit. However, as a matter of procedure this should be decided administratively by the Pre-trial and Assignment Judge, not by formal motion.

BOLITHA J. LAWS,
Chief Judge.

June 23, 1949.

2023 Filed July 5, 1949. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC.,

Plaintiff,

vs.

TOM C. CLARK, ET AL.,

Defendants.

Order.

Upon consideration of the respective motions of plaintiff and defendants to inspect, copy and photograph documents in the possession, custody or control of the adverse party said to be relevant to the issues involved in this case, and the motion of defendants that a Judge of this Court be designated to hear all preliminary motions and proceedings arising in this case, and it having appeared at the oral hearings of said motions that the taking of the deposition of one Hans Sturzenegger heretofore authorized by the Court had been unduly prolonged and would continue to be prolonged until access to certain records is made possible, it is this 5 day of July, 1949.

ORDERED, that the motion of plaintiff be and it hereby is granted in the following respects and subject to the following conditions:

1. That the defendants shall produce and permit the inspection, copying or photographing by or on behalf of plaintiff, of all documents and papers now in its possession, custody or control, having relation to any of the issues in this case, with the exception of any papers or documents which consist only of memoranda prepared by any employee or agent of a United States Government or

of an Allied Government, including statements given to, taken by, such an employee or agent;

2024 2. Said inspection and copying to take place the Department of Justice in Washington, District Columbia, beginning July 11, 1949 and continuing f forty-five working days from that date unless a differe time is set by stipulation of the parties. Said inspecti shall be made between the hours of nine o'clock A. M and five o'clock P. M., with the exception of Saturda and Sundays;

3. The plaintiff may withdraw documents from the p session of defendants for the purpose of having them phot stated and return them immediately thereafter, or t defendants at their election, may photostat such doc ments for plaintiff and at its expense;

4. That the taking of the deposition of the witness Stu zenegger heretofore authorized to be taken be suspend and that it be resumed twenty days after completion of t inspection and copying of documents by plaintiff as herei before described, unless a different time is set by stipul tion of the parties.

IT IS FURTHER ORDERED, that the motion of defendan to order plaintiff to produce for inspection, copying a photographing all documents, not privileged, in its posse sion, custody or control relevant to the issues in this ca be, and it hereby is, granted in the following respects a subject to the following conditions:

1. That plaintiff shall produce and permit the inspe tion, copying or photographing of the following documen of I. G. Chemie and H. Sturzenegger & Cie.: (a) The sou 700 jackets and 140 account books on the premises of I. G Chemie and H. Sturzenegger & Cie., examined in t course of the investigation of the German character I. G. Chemie by investigators of the Swiss Compensatio Office in 1945 and 1946.

2025 (b) The lists of the some 2500 original document taken by investigators of the Swiss Compensatio

Office in 1945 and 1946 from the premises of I. G. Chemie and H. Sturzenegger & Cie. for submission to said Office.

2. The plaintiff shall produce and permit the inspection, copying or photographing by or on behalf of the defendants of the following documents of Osmon A. G.: (a) Documents referring to any time between January 1, 1939 and the present, relating to persons, entities or interests in enemy or enemy-occupied territory. Where such documents are produced, there shall also be produced all other documents, of whatever date, relating to that person, entity or interest. (b) Corporate minutes and by-laws, account books, financial statements, contracts and tax returns and all documents relating to the ownership and assets, direct and indirect, of Osmon, I. G. Chemie, H. Sturzenegger & Cie., General Aniline & Film Corporation, I. G. Farben, and their subsidiaries and affiliates.

3. Plaintiff shall not be required to produce any papers or documents which are the work product of any lawyer or other person employed by plaintiff to assist in the preparation of this case.

4. That said inspection and copying shall take place at the office of the plaintiff at No. 19 Peter Merianstrasse, Basle, Switzerland, commencing thirty days after the completion of the deposition of the witness Sturzenegger heretofore authorized to be taken unless a different time is set by stipulation of the parties. Said inspections shall be made between the hours nine o'clock A. M. and five o'clock P. M. with the exception of Saturdays and Sundays, and said inspection and copying may continue for forty-five working days.

2626 5. That the defendants may withdraw documents from the possession of the plaintiff for the purpose of having them photostated and return them immediately thereafter, or the plaintiff may, at its election, photostat such documents for the defendants and at the expense of the defendants.

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It Is Further Ordered, that the inspection, copying and photographing hereinbefore authorized shall take place in the presence of counsel for or representatives of the adverse parties unless agreement to the contrary is had between the parties.

It Is Further Ordered, that the motion of defendants that a Judge of this Court be designated to hear all preliminiary motions and proceedings arising in this Court is denied, without prejudice to its being granted administratively upon application to the Pre-trial and Assignment Judge of this Court.

Bolitha J. Laws,
Chief Judge.

July 5, 1949.

2027 Filed November 7, 1949. Harry M. Hull, Clerk.

Order.

Upon consideration of the motion of the defendants under Rule 37(a) for an order directing Hans Sturzenegger, by whom the plaintiff's deposition is being taken pursuant to defendant's notice dated October 27, 1948, to answer specified questions propounded by defendants upon oral examination.

And upon consideration of plaintiff's opposition to the motion on the ground that matters relating to the affairs of Mr. Sturzenegger personally or to the affairs of the banking firm of H. Sturzenegger et Cie. are outside the scope of the notice pursuant to which the deposition is being taken, and after hearing the parties and upon consideration of all the papers submitted herein,

It is hereby Ordered that Hans Sturzenegger is directed to answer the following questions:

1. Did you, during the war, Mr. Sturzenegger, transfer monies between South American companies, any companies, and I. G. Farben?

And by "you" we all mean you or your bank, H. Sturzenegger et Cie.

2028 2. Mr. Sturzenegger, did you ever receive any instructions from I. G. Farben as to the transfer of money between South American companies, any companies, and I. G. Farben?

3. Did you ever receive instructions as to the transfer of money between any companies outside of South America and I. G. Farben during the period 1939 to 1945?

4. Will you describe the course of your business with Farben or with Germany during the war? I will say between 1939 and 1945.
More specifically, will you describe it between Pearl Harbor, December 7, 1941, and the surrender of Germany?

5. And will you describe the course of your banking business with occupied countries? Countries occupied by Germany when they were occupied?
And by that, of course, we all understand I mean France during its occupation, Norway during its, and so on.

6. Will you tell us the approximate amounts of money that I. G. Farben deposited with you during that period?

7. And will you tell us the amounts and the sources of money that were transferred through you to I. G. Farben?

8. Isn't it the fact, Mr. Sturzenegger, that you customarily or often between 1939 and 1945 received remittances from outside Germany for the account of Farben under code words?
And if your answer to that should be that you ever received any such remittance, will you give us all the details?

9. Isn't it the fact, Mr. Sturzenegger, that you received communications from people or firms in Japan under code words involving remittances between Germany and Japan?

And if your answer should be that that was the case at any time or that it might have been the case under your impression of your banking business with Farben, will you give us all the details?

10. Isn't it the fact, Mr. Sturzenegger, that you executed financial transactions for Farben in neutral countries without mentioning Farben's name?

And if your answer should be that it might have been possible or that it did happen or that you couldn't exclude the possibility, will you give us any details that you have or can reconstruct from your banking business with Farben?

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11. Isn't it the fact, Mr. Sturzenegger, that at some time or between 1939 and 1945 or that during the entire period Farben kept accounts with you in various foreign countries? [The uncorrected transcript states "countries," but the word used was "currencies".]

12. And if your answer should be that Farben had ever kept accounts with you in any currencies other than Swiss, will you give us all the details?

13. Isn't it the fact, Mr. Sturzenegger, that for the account of Farben you bought Farben stocks or bonds or both during the period 1939 to 1945 to the value of approximately a million Reichsmarks or more?

14. And if your answer should be that for anyone's account during that period you have bought Farben stocks or bonds, will you give us all the details?

15. Isn't it the fact, Mr. Sturzenegger, that during the period 1939 to 1945 Farben kept with you on deposit for safekeeping or for other purposes its own stocks or bonds to a value of over a million Reichsmarks?

16. Isn't it the fact, Mr. Sturzenegger, that using Farben's money and on Farben's instructions you cloaked Farben's interest in numerous transactions in neutral countries during the war period?

17. Isn't it the fact, Mr. Sturzenegger, that using Farben's money and on Farben's instructions you

cloaked Farben's ownership of property in corporations in various countries over the world other than Germany during the war period?

18. Isn't it the fact, Mr. Stürzenegger, that you advised I. G. Farben as to the disposition of its property in the event of an outbreak of a European war? And that you gave such advice during the European war?

19. Isn't it the fact, Mr. Stürzenegger, that frequently during the war period you made remittances to Farben through Deutsche Laenderbank?

20. Isn't it the fact, that your large remittances to Farben through the Deutsche Laenderbank on Farben's instructions during the war were without mentioning Farben's name and under a code word?

21. Isn't it the fact, Mr. Stürzenegger, that under a code word for the benefit of I. G. Farben you accepted and received during the war period remittances from Japan?
From China?
From South America?
From other countries as well?

2030 22. Will you give us all the details, if any, if your answer to questions 13 and 15-21 should be other than an unqualified denial. [This question was put by stipulation of counsel.]

And it is further Ordered that the copy of the transcript of the deposition to date, filed by defendants with this motion, may be withdrawn by defendants.

/s/ Jennings Bailey,
Judge.

Dated: November 7, 1949.

2033 Filed November 7, 1949. Harry M. Hull, Clerk.

Cross Motion of Defendants Under Rule 37(d) for Dismissal of Plaintiff's Complaint With Prejudice for Wilful Failure of the Plaintiff and Its Officer to Attend the Taking of Their Deposition.

The defendants by their undersigned attorneys respectfully move the Court:

(1) For an order pursuant to Federal Rule 37(d) dismissing the complaint of the plaintiff with prejudice on the ground that it and its officer, Hans Sturzenegger, have wilfully failed to appear for the continued taking of its deposition by said officer;

(2) Such other and further relief as the Court may deem just in the premises.

This motion is made on the record in this case, on the annexed memorandum and affidavit in support of this motion, and upon the motion of the plaintiff for postponement of the deposition, served today, November 4, 1949.

Respectfully submitted,

November 4, 1949.

[Signed by counsel for defendants]

* * * *

2041 Filed November 7, 1949. Harry M. Hull, Clerk.

Affidavit of David Schwartz in Support of Defendant's Cross Motion Under Rule 37(d) for Dismissal of Plaintiff's Complaint With Prejudice and in Opposition to Plaintiff's Motion for Postponement of Deposition.

DISTRICT OF COLUMBIA, ss:

David Schwartz, being duly sworn, deposes and says:

I am a Special Assistant to the Attorney General in the Department of Justice. I am one of counsel for defendants in this case and I am familiar with the circumstances underlying this cross motion and the plaintiff's motion.

The following chronological statement of facts is submitted in support of our motion for a dismissal of the plaintiff's complaint with prejudice under Rule 37(d), on the ground that plaintiff is in wilful disobedience of this Court's orders for the taking of its deposition. It is also submitted in opposition to plaintiff's motion for postponement of the deposition.

1. October 21, 1948—Complaint filed. Plaintiff, a Swiss holding company, alleges that it is not an enemy and asks for the return of some 2,000,000 shares of General Aniline & Film Corporation, vested as enemy property by the Alien Property Custodian.

2042 2. October 27, 1948—Defendants serve notice on plaintiff's counsel for the taking of the deposition of plaintiff corporation by its officer, Hans Sturzenegger, and by other officers.

3. January 5, 1949—The Court, by Chief Judge Laws, denies the motion of plaintiff that the depositions should not be taken, i.e., overrules the contention of plaintiff that Hans Sturzenegger is not an officer of plaintiff and should not be required to attend by reason of service of the notice on the plaintiff's counsel.

4. February 1, 1949—Deposition of Hans Sturzenegger begins.

5. February 17, 1949—Deposition adjourns because of the refusal of Mr. Sturzenegger to answer questions as to his personal banking relations with I. G. Farben during the war and for the argument, on the following day, of cross motions for inspection of documents.

6. February 18, 1949—On the argument of the cross motions, Chief Judge Laws orders that the deposition be suspended pending a decision on the cross motions for inspection of documents.

7. July 5, 1949—The Court, per Chief Judge Laws, orders that the plaintiff be permitted to inspect the documents of the defendants for 45 working days and that the deposition be resumed 20 days thereafter.

8. July 11, 1949—Plaintiff begins inspection of defendants' documents.

9. September 13, 1949—I wrote to counsel for plaintiff that "The time alloted by the Court for your inspection and copying of our papers, as extended for one day by agreement between us, expires . . . tomorrow, September 14, at the close of business. . . . We expect that Mr. Sturzenegger will be in our office on October 4, pursuant to the provision of the order

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under which his deposition is to resume twenty days after completion of the inspection. As you know, we are most anxious to expedite these pretrial proceedings and should you desire to resume the deposition earlier than October 4, we should be pleased to agree upon an earlier date."

10. September 14, 1949—Inspection completed. Plaintiff's counsel called on me to ask for an extension of the resumption of the deposition to October 17. His reason was that he had worked on the inspection of our documents all summer and needed a vacation. I agreed.

11. September 15, 1949—Counsel for plaintiff wrote to me acknowledging receipt of my letter of September 13 and confirming our conversation of September 14. He further wrote "At my request, the Sturzenegger deposition will not be resumed until Monday, October 17th."

12. Late September
Early October—Counsel for plaintiff asked for and was granted a postponement of the resumption of the deposition until November 1.

13. October 13, 1949—I wrote to counsel for plaintiff "to confirm that at your request the resumption of the deposition of Mr. Sturzenegger is postponed until November 1."

14. October 21, 1949—Counsel for plaintiff called on me to ask for a further postponement, and on my refusal, said that he would put to his client the question of substituting, for the resumption of the Sturzenegger deposition, an immediate inspection of some of plaintiff's documents. It was explicitly agreed between us that any discussion of such immediate inspection would not be used as the basis for a request for further delay in the resumption of the deposition.

2044 15. October 24, 1949—Counsel for plaintiff offered to substitute an inspection of some papers, under specified conditions, for the immediate resumption of the deposition. I asked counsel for plaintiff to acknowledge my letter of October 13, which confirmed the postponement until November 1. Counsel for plaintiff offered to initial a carbon of that letter but it was not immediately available and so he stated that he would acknowledge the letter. The letter has never been acknowledged.

16. October 25, 1949—In a telephone conversation with counsel for plaintiff, I rejected his proposal for a substitution of inspection of some papers for a resumption of the deposition. Counsel for plaintiff thereupon requested a week's postponement from November 1 to November 8, stating that he had somehow created an erroneous impression with his

client that the deposition would not be resumed on November 1. Counsel for plaintiff explicitly agreed that the postponement he was requesting was for his personal benefit, vis-a-vis his client. As a condition to granting the extension, I asked for and received his assurances that he would ask for no further extension except for reasons of *force majeure*.

17. October 26, 1949—I wrote to counsel for plaintiff:

> This is to confirm that at your request we have agreed that the resumption of the deposition of Hans Sturzenegger is postponed until November 8. We also have your assurance that you will not make further requests for extensions of the resumption of the deposition, except for reasons of *force majeure*.
>
> In acknowledging this letter will you please also acknowledge my earlier letter to you of October 13, 1949.

Neither this letter of October 26, nor my earlier letter of October 13 has ever been acknowledged by counsel for the plaintiff.

2045 18. November 1, 1949—Judge Bailey, from the bench, granted defendants' motion for an order directing that on the resumed deposition, Mr. Sturzenegger answer questions with respect to his personal banking business with I. G. Farben during the war. See item 5, *supra*, February 17, 1949, for Mr. Sturzenegger's refusal to answer these questions.

19. November 2, 1949 about 4 or 5 p. m.—Counsel for the plaintiff was informed, over the telephone, by Mr. Bayatoi, Acting Director of the Office of Alien Property and senior counsel for defendants, that no further extensions of the resumption of the deposition would be granted.

20. November 3, 1949—at 6 a. m. Wash. time (noon Swiss time)—Plaintiff in Basle filed a cable to its counsel in Washington, D. C. reading:

> Sturzeneggers departure Friday impossible according to decision by his doctor stop According to first information he must undergo medical treatment for several weeks stop Please cable instructions about formalities regarding deposition.

This cable was received by RCA in Washington at 7 a. m. November 3, Washington time. I was not informed by counsel for the plaintiff of the existence or receipt by him of this cable, in two telephone conversations we had, at noon and in the afternoon, on November 3 and in a third telephone conversation we had early in the morning of November 4.

21. November 4, 1949—I was without any knowledge or hint of the above cable or of a claim of Mr. Sturzenegger's ill health. I was anxious, however, over the fact that

2046 counsel for plaintiff had never acknowledged my letters of October 13 and 26 postponing the deposition to November 1 and to November 8. Accordingly, I had delivered to counsel for plaintiff, for his signature, a stipulation reading:

> It is hereby stipulated by and between the plaintiff and defendants that the resumption of the deposition of Hans Sturzenegger is postponed until November 8, 1949 at 10 a.m. in the offices of the counsel for defendants at 939 D Street, N. W., Washington 25, D. C.

At 10:45 a. m. counsel for plaintiff refused to sign the stipulation. A few minutes after 12 Noon, there was served on me plaintiff's motion for indefinite postponement of the deposition, supported by the cable from plaintiff corporation quoted above and by a reply from plaintiff's counsel asking that a

physician's certificate be sent by cable to Washington.

This chronological statement of the facts is submitted in opposition to the plaintiff's motion for postponement and in support of defendants' cross motion for dismissal of plaintiff's complaint pursuant to Rule 37(d). It is submitted particularly in support of our contention, stated fully in the annexed memorandum, that the plaintiff corporation is wilfully disobeying the orders of this Court and that the claim of illness of Mr. Sturzenegger should be given no credence.

Dated: November 4, 1949.

/s/ DAVID SCHWARTZ,
Special Assistant to the Attorney General.

[Sworn to Nov. 5, 1949.]

2063 Filed November 9, 1949. Harry M. Hull, Clerk.

Affidavit of Stephen W. Ranson.

DISTRICT OF COLUMBIA, ss:

Stephen W. Ranson being duly sworn deposes and says:

I am a Lieutenant Colonel, U. S. Army, Assistant Chief, Neuropsychiatry Consultants Division, in the Office of the Surgeon General. I have served a total of five and one-half years in the Medical Corps, United States Army. I was graduated from Northwestern University Medical School in 1935. I was certified as a specialist in Neurology in 1942 and in Psychiatry in 1947.

The diagnosis and treatment of sciatica falls within the specialty of Neurology. I have had the following experience in Neurology and Psychiatry. I was in charge of the Seventh Army Neuropsychiatric Center, August 1944 to June 1945; was Psychiatrist, Seventh Army, August-September 1945; Associate Professor of Preventive Medicine

and Assistant Professor of Psychiatry, Johns Hopkins University Medical School, 1947-1948.

2064 In my Army experience I have had extensive experience in malingering. I have studied the problem carefully, both in practice and as a part of my specialization in military and combat psychiatry.

Sciatica is a disorder of the sciatic nerve in the leg. The roots of that nerve are in the spine. The chief symptom of sciatica is pain in the leg.

Myalgia means pain in the muscles and is not a disease, but rather a symptom.

Sciatica may be caused either by an inflammation or irritation of the sciatic nerve, which can have its origin in a physical cause such as a blow or lesion, or by a nonphysical cause such as a toxin in the blood or a vitamin deficiency. Pain in the area of the sciatic nerve may also be of psychologic origin. One of its chief characteristics is pain, and it is often accompanied by backaches. Acute sciatica gives severe pain. Frequently, the patient bends his knee and keeps his leg immobile in the position giving greatest comfort. The diagnosis of sciatica cannot possibly be made unless there is complaint of pain in the leg. Although it usually comes on over a period of several days, acute sciatica may come on within a period such as 12 hours and it may leave in a similar period. Once it leaves, there may be no residual phenomena from which it can be determined whether or not a patient did in fact have sciatica previously.

Patients with acute sciatica are generally advised by their physicians not to travel. There may be an absolute prohibition of travel because of intractable pain, or physical disorders related to the sciatica. Travel of the patient suffering acute sciatica without complications, is, however, possible under proper care which would include the administration of analgesics, very possibly opiates. Patients in the Army are

2065 frequently transported from one area to another with diseases, without complications, as painful and as serious as acute sciatica.

In my experience I have learned the following with respect to malingering:

The most commonly malingered complaints have been total amnesia, and impairments of hearing and of sight. These, however, may usually be detected by an alert examiner. One of the complaints frequently simulated by more intelligent malingerers has been backache. It is an effective simulated complaint because there are few methods of negativing it with certainty. Perhaps the most effective simulated maladies from the point of view of the malingerer are certain forms of insanity. They, however, have a social drawback and they cannot convincingly rapidly disappear and reappear without residuae. Aside from mental illness, sciatica is among the most effective of the maladies available to an intelligent malingerer. It is relatively easy to simulate after some training and preparation, and the complaint may plausibly come and go at the will of the patient and without residuae in symptom-free periods. I believe that it cannot be detected readily without careful and specialized tests, including psychological tests, by a specialist with substantial experience, and that positive detection (as opposed to suspicion) is by no means inevitable even under such circumstances.

The following hypothetical question has been put to me by counsel for defendants. "Assume that you were a corrupt doctor and were approached by a patient of above average intelligence who explained to you that he desired to malinger in order to be excused from the necessity of traveling to another country to do business there requiring mental activity over a period of time, such as giving testimony. What would you recommend?" My answer is that

I would recommend that the patient simulate one of
2066 several conditions, among them acute sciatica.

Dated: November 9, 1949.

/s/ STEPHEN W. RANSON.

[Sworn to Nov. 9, 1949.]

* * *

2083 Filed November 18, 1949. Harry M. Hull, Clerk.

Filed by Defendants.

TELEGRAM

Rec'd November 18, 1949
11:58 a. m.

FROM: Bern
TO: Secretary of State
NO: 7159, November 18

FOR JUSTICE, OFFICE OF ALIEN PROPERTY, ATTENTION HILL AND SCHWARTZ, FROM DOUGHERTY.

Doctors Eggdr* and Luthy have advised me informally that Luthy's examination objectively shows Sturzenegger suffering from disc hernia with attendant sciatica symptoms. Following statement dictated in presence of and approved by Luthy:

"Dr. Luthy examined Dr. Sturznegger November 17 in Baden, Aargau. Patient was in bed. Examination revealed clear-cut case of disc hernia, diagnosis based on objective symptoms. According to case history, hernia slipped approximately November 1. Patient's physician saw him immediately after and advised cure in Baden. Patient proceeded to Baden November 3, was kept in bed since that date, present condition much improved. Dr. Luthy does not think it would be advisable for patient to travel before three to four weeks from today. Formal medical report probably ready November 21,22 and will be forwarded direct from Bern airmail."

I am leaving for Munich today.

VINCENT

*As received.
DM:KC

PLAIN

2084 Filed December 2, 1949. Harry M. Hull, Clerk.

Order Denying Crossmotion of Defendants Under Rule 37(d) for Dismissal of Complaint.

Upon consideration of the motion of the defendants under Rule 37(d) for dismissal of the complaint upon the ground that Hans Sturzenegger wilfully failed to appear on November 8, 1949 for the resumption of his deposition, and after hearing argument by counsel, and finding that

said witness was prevented from appearing because of the condition of his health, and finding further that said witness did not wilfully fail to appear at the time stated, and having this day ordered postponement of said deposition because of the witness' illness, and on the papers submitted and for other good cause shown, it is, by the Court, this 2nd day of December, 1949

ORDERED, that said motion be and it is hereby denied, with leave to renew it if occasion justifies.

/s/ MORRIS,
Judge.

* * * *

2099 Filed January 10, 1950. Harry M. Hull, Clerk.

Order.

Upon consideration of the emergent motion of the plaintiff to be excused, on the ground of foreign law or foreign privilege, from answering, through Hans Sturzenegger, the questions which this Court, by order dated November 7, 1949, directed that Hans Sturzenegger answer, and after hearing the parties, it is hereby

ORDERED that the motion of the plaintiff be and it is hereby denied and that the said questions be answered. The ground for this order is not that the questions have been ordered to be answered, but that foreign law or foreign privilege is not a valid excuse for a refusal to answer the questions.

Dated: January 10, 1950.

/s/ JENNINGS BAILEY,
Judge.

2100 Filed January 25, 1950. Harry M. Hull, Clerk.

Defendants' Motion for an Amendment to the Order of July 5, 1949 So as to Provide That Plaintiff Produce the Documents of H. Sturzenegger et Cie. in the District of Columbia and Not in Basle, Switzerland.

Come now the defendants by their undersigned attorneys and respectfully move the Court, pursuant to Rule 34, for an order amending the order of this Court made July 5, 1949, per Chief Judge Laws, so as to provide that the documents of H. Sturzenegger et Cie., which the plaintiff is required by said order to produce for inspection and copying by the defendants, be produced in the District of Columbia and not, as the order presently provides, in Basle, Switzerland.

The ground for this motion is that Hans Sturzenegger has recently stated on deposition that he does not intend to permit plaintiff to produce the documents pursuant to the outstanding order. Defendants have good reason to believe that plaintiff and Hans Sturzenegger will offer, as their excuse for noncompliance, that production would be a crime under Swiss laws, laws which have been held by this Court to be of no effect in this

2101 proceeding. Defendants' attorneys should not be required to journey to Switzerland, there be faced with a refusal to produce, and only then return to appeal to the Court for production in the United States.

The defendants also pray for such further relief as is just in the premises.

January 25, 1950.

[Signed by counsel for defendants.]

~~2157~~

2157 Filed January 26, 1950. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., ETC. (I. G. CHEMIE),
Plaintiff,

v.

J. HOWARD MCGRATH, Attorney General of the United States, as successor to the Alien Property Custodian, *et al.*,
Defendants.

Answer Amended in Accordance With Orders of the Court.

The defendants J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and Georgia Neese Clark, Treasurer of the United States, for their answer to the complaint herein:

Deny each and every allegation contained in the counts and paragraphs of the complaint (and not merely the allegations of paragraphs which are in their entirety expressly denied below), except those paragraphs or allegations as are hereinafter expressly, and not by implication, admitted.

With respect to the specific counts and paragraphs of the complaint, the defendants:

FIRST COUNT

1. Admit that the action purports to be brought and the jurisdiction of the court is invoked under the Fifth Amendment to the Constitution of the United States and the Trading with the Enemy Act, as amended (U. S. Code, Title 50, Appendix, Section 1, *et seq.*), and particularly Section 9(a) thereof.

2. Admit, on information and belief, that the plaintiff is

a corporation organized under the laws of Switzerland and that its
2158 name has been changed from Internationale Gesellschaft fur Chemische Unternehmungen A. G. (I. G. Chemie), and Societe Internationale pour Enterprises Chimiques S. A. (I. G. Chemie), to Societe Internationale pour Participations Industrielles et Commerciales S. A. and Internationale Industrie- & Handelsbeteiligungen A. G.; and it is now commonly sometimes called "Interhandel";

3. Deny the allegations of Paragraph 3.

4. Admit, on information and belief, that 2,050,000 shares of the Common B stock, and 455,448 shares of the Common A stock of General Aniline & Film Corporation may have a value in excess of One Hundred Million Dollars ($100,000,000.00).

5. Admit that on February 16, 1942, the Secretary of the Treasury executed and issued a Vesting Order whereby, *inter alia*, shares of General Aniline & Film Corporation of the description and number referred to in Paragraph 4, First Count, *supra*, were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order is filed with and published in the Federal Register (7 F. R. 1046). A certified copy thereof is attached hereto as Exhibit A and by this reference is incorporated herein.

Admit that on April 24, 1942, the Alien Property Custodian executed and issued Vesting Order No. 5, whereby the shares of stock of General Aniline & Film Corporation covered by the aforementioned Vesting Order issued by the Secretary of the Treasury on February 16, 1942, were vested, under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order No. 5 is filed with and published in the Federal Register (7 F. R. 3148). A certified copy thereof is attached hereto as Exhibit B and by this reference is incorporated herein.

~~2158~~

Admit that pursuant to said Vesting Order No. 5 the Secretary of the Treasury delivered, transferred and assigned to the Alien Property Custodian, *inter alia,* shares of stock of General Aniline & Film
2159 Corporation of the description and number referred to in Paragraph 4, First Count, *supra.*

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R. 11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order shares of stock of the General Aniline & Film Corporation of the description and number referred to in Paragraph 4, First Count, *supra,* and vested under the aforementioned Vesting Order of February 16, 1942, and under the aforementioned Vesting Order No. 5, were transferred to and are now in the possession of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

7. Admit that shares of stock of the description and number referred to in Paragraph 4, First Count, *supra,* and vested under the Vesting Order of February 16, 1942 and under Vesting Order No. 5, were seized, vested and are being held without the consent of the plaintiff.

8. Admit that on or about February 1, 1943, the plaintiff filed with the then Office of Alien Property Custodian a document under oath, in the form required by the Alien Property Custodian, entitled "Notice of Claim for Return of Property" with respect to 455,448 shares of the A stock and 2,050,000 shares of the B stock of the General Aniline & Film Corporation and all dividends and increment on said shares, vested under Vesting Order No. 5.

Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath,

Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to the aforesaid stock, dividends and increment.

9. Deny the allegations of Paragraph 9.

2160 10. Admit that plaintiff purports to sue the defendant Georgia Neese Clark, Treasurer of the United States, under Section 9(a) of the Trading with the Enemy Act, and that cash dividends received by the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and his predecessors as Alien Property Custodian on the shares of stock vested by Vesting Order No. 5 are on deposit with defendant Clark in an account in the United States Treasury in the name of J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

SECOND COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra.*

4. Admit, on information and belief, that 176 shares of the Common A stock of General Aniline & Film Corporation may have a value in excess of Thirty-five Thousand Dollars ($35,000.00).

5. Admit that on February 15, 1943, the Alien Property Custodian executed and issued Vesting Order No. 907, whereby, *inter alia,* 176 shares of the Common A stock of the General Aniline & Film Corporation were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order is filed with and published in the Federal Register (8 F. R. 2453). A certified copy thereof is attached hereto as Exhibit C and by this reference is incorporated herein.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R.

11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order shares of stock of the description and number referred to in Paragraph 4, Second Count, *supra*, and vested under Vesting Order No. 907, were transferred to the predecessor of and are now in the possession of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

2161 7. Admit that the shares of stock of the description and number referred to in Paragraph 4, Second Count, *supra*, and vested under Vesting Order No. 907, were seized, vested and are being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to 176 shares of the A stock of the General Aniline & Film Corporation and all dividends and increment on said shares, vested under Vesting Order No. 907.

9. Deny the allegations of Paragraph 9.

10. Admit that plaintiff purports to sue the defendant Georgia Neese Clark, Treasurer of the United States, under Section 9(a) of the Trading with the Enemy Act, and that cash dividends received by the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and his predecessors as Alien Property Custodian on the shares of stock vested by Vesting Order No. 907 are on deposit with defendant Clark in an account in the United States Treasury in the name of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

THIRD COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra*.

4. Admit that on June 24, 1946, the Alien Property Custodian executed and issued Vesting Order No. 6718 whereby certain debts or other obligations arising out of current accounts entitled "Internationale Gesellschaft fuer Chemische Unternehmungen A. G." at the Bank of the Manhattan Company, the Irving Trust Company, the Credit Suisse, New York Agency, and the Swiss Bank Corporation, New York Agency, were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder, and that pursuant to said Vesting Order

2162 the Alien Property Custodian was paid the sum of Nine Hundred Seventy-Four Thousand, Three Hundred Thirteen Dollars and Eighty-Seven Cents ($974,313.87). The sums received from said banks are respectively:

Bank of the Manhattan Company	$182,089.90
Irving Trust Company	186,300.08
Credit Suisse, New York Agency	288,179.07
Swiss Bank Corporation, New York Agency	317,744.82
	$974,313.87

Said Vesting Order No. 6718 is filed with and published in the Federal Register (11 F. R. 7643). A certified copy thereof is attached hereto as Exhibit D and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R. 11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney Gen-

eral became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Vesting Order No. 6718 was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath, as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant, J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to

2163 $975,244.70, alleged to have been vested under Vesting Order No. 6718.

9. Deny the allegations of Paragraph 9.

FOURTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in paragraphs 1 to 3, First Count, *supra.*

4. Admit that on June 26, 1946 the Alien Property Custodian executed and issued Supplemental Vesting Order No. 6767, whereby a certain debt or other obligation arising out of a current account entitled "N. V. Maatschappij voor Industrie en Handelsbelangen" at the Bank of the Manhattan Company was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder, and that pursuant to said Vesting Order the

Alien Property Custodian was paid the sum of Two Hundred Forty-Two Thousand, Seven Hundred Thirty-Six Dollars and Nineteen Cents ($242,736.19).

Said Supplemental Vesting Order No. 6767 is filed with and published in the Federal Register (11 F. R. 7733). A certified copy thereof is attached hereto as Exhibit E and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R. 11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Supplemental Vesting Order No. 6767, was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath

2164 as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to

$308,750.00, alleged to have been vested under Supplemental Vesting Order No. 6767.

9. Deny the allegations of Paragraph 9.

FIFTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Court, *supra*.

4. Admit that on June 26, 1946, the Alien Property Custodian executed and issued Supplemental Vesting Order No. 6768, whereby a certain debt or other obligation of General Aniline & Film Corporation for the payment of which said Corporation deposited $402,412.50 with the National City Bank of New York, in a trust account at the said bank, entitled

> General Aniline & Film Corporation, in trust for the owners of 900,000 shares of Common B stock of General Aniline & Film Corporation, registered in the names of Chemo Maatschappij voor Chemische Ondernemingen, Amsterdam, Holland and N. V. Maatschappij voor Industrie en Handelsbelangen, Amsterdam, Holland.

was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder; and that pursuant to said Vesting Order, the Alien Property Custodian was paid the sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50).

2165 Said Supplemental Vesting Order No. 6768 is filed with and published in the Federal Register (11 F. R. 7733). A certified copy thereof is attached hereto as Exhibit F and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R. 11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Supplemental Vesting Order No. 6768, was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath, as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested, and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to $402,412.50, vested under Supplemental Vesting Order No. 6768.

9. Deny the allegations of Paragraph 9.

2166 SIXTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra*.

4. Admit that on June 26, 1946, the Alien Property Custodian executed and issued Supplemental Vesting Order No. 6769 whereby a certain debt or other obligation of General Aniline & Film Corporation for the payment of which said Corporation deposited $47,125.00 with the National City Bank of New York in a trust account at the said bank, entitled "General Aniline & Film Corporation, in Trust for ultimate beneficiaries of 650,000 shares of Common B stock of General Aniline & Film Corporation

~~2166~~

registered in the name of L. D. Pickering & Co.", was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder; and that pursuant to said Vesting Order the Alien Property Custodian was paid the sum of Forty-Seven Thousand, One Hundred Twenty-Five Dollars ($47,125.00).

Said Supplemental Vesting Order No. 6769 is filed with and published in the Federal Register (11 F. R. 7734). A certified copy thereof is attached hereto as Exhibit G and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R. 11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Supplemental Vesting Order No. 6769, was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath, as successor to the Alien Property Custodian.

2167 Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the

predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to $47,125.00, vested under Supplemental Vesting Order No. 6769.

9. Deny the allegations of Paragraph 9.

SEVENTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1-3, First Count, *supra*.

4. Admit that on October 14, 1946, the Alien Property Custodian executed and issued Supplemental Vesting Order No. 7874, whereby

> An obligation in the amount of $108,750.00 owed by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, to Union Bank of Switzerland, Zurich, Switzerland, constituting a portion of an account entitled "Union Bank of Switzerland, Zurich, Switzerland", maintained at the aforesaid bank, together with any and all rights to demand, enforce and collect the same,

was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder.

Said Supplemental Vesting Order No. 7874 was filed with and published in the Federal Register (11 F. R. 13887). A certified copy thereof is attached hereto as Exhibit H and by this reference is incorporated herein.

5. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F. R. 11981, error corrected 11 F. R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

2168 6. Admit that on February 16, 1948 the predecessor of J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, executed and issued an amendment to Vesting Order No. 7874, whereby

the description of the property vested by Supplemental Vesting Order No. 7874 was amended to read:

> That certain debt or other obligation of the Chase National Bank of the City of New York, 18 Pine Street, New York, New York, in the amount of $108,750.00, arising out of an account entitled Union Bank of Switzerland, Blocked Germany and Switzerland, Zurich, Switzerland, maintained at foresaid The Chase National Bank of the City of New York, and any and all rights to demand, enforce and collect the same.

Said amendment to Vesting Order No. 7874 was filed with and published in the Federal Register (13 F. R. 1180). A certified copy thereof is attached hereto as Exhibit I and by this reference is incorporated herein.

Admit that pursuant to said Vesting Order No. 7874 and said amendment to Vesting Order No. 7874, the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, was paid the sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00).

Admit that the said sum is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury, in the name of the defendant McGrath, as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Deny the allegations of Paragraph 7.

8. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

9. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property", with respect

to $108,750.00, vested by Vesting Order No. 7874, as amended.

10. Deny the allegations of Paragraph 10.

2169 *First Separate Defense.*

1. Upon information and belief, the defendants allege that between about 1928, the exact date being unknown to the defendants, and the surrender of Germany in 1945, and thereafter to a time unknown to the defendants, the plaintiff engaged in and participated in a conspiracy or common plan, which had been in existence since about 1920, with I. G. Farben, Ed. Greutert et Cie., Basle, Switzerland (and its successor firm, H. Sturzenegger et Cie.), and others unknown to the plaintiff. Among the co-conspirators were the subsidiary, predecessor and controlled companies of the plaintiff, of I. G. Farben, of H. Sturzenegger et Cie., and the officers, directors, stockholders, agents, and representatives of the co-conspirators. The ultimate purpose and objective of said conspiracy or common plan was to conceal, camouflage and cloak the ownership, control, and domination by I. G. Farben of properties and interests in many countries of the world, including the United States, other than Germany. Among the various purposes and objectives of the said conspiracy were to assist I. G. Farben:

(a) To escape, avoid, or evade the tax laws of the German government;

(b) To escape, avoid or evade the tax laws, the laws aimed at foreign-owned property and other laws of the countries in which said properties and interests were located;

(c) To create and maintain reserves of properties and interests which could be realized in non-German, sound currencies;

(d) To avoid the effect of anti-German and anti-foreign sentiments, including boycotts of German and

foreign-made goods; in the countries in which said properties and interests were located;

(e) To conceal, camouflage and cloak the ownership, control and domination by I. G. Farben of properties and interests located in countries, including the United States, other than Germany, in order to avoid seizure and confiscation in the event of war between such countries and Germany.

2170 In the purposes and objectives stated under (d) and (e) above, the named conspirators conspired with the government of the German Reich.

2. To effectuate the said conspiracy or common plan, the named conspirators and others, deceased and unknown to the defendants, used divers plans, means, methods, acts and devices, including but not limited to, the following:

(a) Caused the plaintiff to be organized in the year 1928;

(b) Caused blocks of stock in the plaintiff to be issued to, transferred among, and held by corporations, partnerships, consortia and individuals owned, controlled or dominated by I. G. Farben;

(c) Caused General Aniline & Film Corporation (originally known as American I. G. Chemical Corporation) to be organized in the year 1929;

(d) Thereafter caused blocks of the stock of the General Aniline & Film Corporation to be issued to, transferred among, and held by corporations, partnerships, consortia and individuals owned, controlled or dominated by I. G. Farben;

(e) Caused corporations to be organized and stock to be issued to, transferred among, and held by the co-conspirators and others; caused the management, control and operation of corporations and partnerships to be entrusted to agents, representatives and associates of I. G. Farben and others responsible and loyal to I. G. Farben; caused, for these purposes, agreements to be made by and between the co-con-

spirators; caused loans and options to be given and taken with respect to the purchase and sale of stock, stock certificates to be secreted, applications to be made and favorably acted upon by the government of the German Reich; at various times unknown to the defendants and in details unknown to the defendants;

2171 (f) Caused to be executed agreements and contracts affecting subsidiary, associate and independent corporations, partnerships, associations and individuals, with respect to sales, patents, patent licenses, technical experience, know-how and other matters for the purpose of retaining, holding and exercising control and domination by I. G. Farben of such subsidiary, associate and independent corporations, partnerships, associations and individuals, at various times unknown to the defendants and in details unknown to the defendants;

(g) Held meetings and discussions in Germany, Switzerland, the United States and other places unknown to the defendants, at various times unknown to the defendants and in details unknown to the defendants.

3. By reason of the foregoing, the plaintiff and the property claimed by the plaintiff are enemy and enemy tainted, and, therefore, the plaintiff has no standing to institute or maintain this action.

2172 FIRST COUNTERCLAIM

1. This counterclaim arises under 26 U. S. C., Secs 3740 and 3744 and Secs. 24(1) and 24(5) and 24(20) of the Judicial Code (28 U. S. C., Secs. 41(1), 41(5) and 41(20)).

2. This counterclaim is prosecuted under the authority of the Attorney General at the request of the Commissioner of Internal Revenue.

3. On or about November 8, 1929, the plaintiff herein and the Standard Oil Company of New Jersey, a corpora-

tion organized under the laws of the State of Delaware, by their agents and representatives executed a contract and on November 22, 1929, the aforesaid parties performed and discharged aforesaid contract in the City of New York, New York, at which time and place in full discharge and performance of the aforesaid contract the plaintiff delivered to the Standard Oil Company of New Jersey three copies of a so-called Four Party Agreement and one thousand shares (1,000) of stock comprising the entire authorized shares of capital stock of the Atlantic Binger Company, a corporation organized under the laws of the State of Delaware, and, in exchange and consideration for the aforesaid performance on the part of the plaintiff, Standard Oil Company of New Jersey then and there transferred and delivered to plaintiff one thousand (1,000) shares of stock comprising the entire amount of the authorized capital stock of Old Shares Investment Company, a corporation organized under the laws of the State of Delaware.

4. The cost to the plaintiff of the aforesaid three copies of the so-called Four Party Agreement was nil and the cost to the plaintiff of the aforesaid one thousand (1,000) shares of stock of Atlantic Binger Company was $2,385,714.28 and on aforesaid day the fair market value of aforesaid Old Shares Investment Co. stock was $35,059,366.31. On this exchange on November 22, 1929, the plaintiff realized a net profit or gain of not less than $32,673,652.03.

Thereafter for the

2173 calendar years 1930, 1931, 1932, and 1933 the plaintiff earned and received as dividends on the Old Shares Investment Company stock not less than $1,446,324.25, as follows:

1930	$ 792,022.00
1931	492,022.00
1932	118,022.00
1933	44,258.25
	$1,446,324.25

5. With respect to each of the years aforesaid, 1929, 1930, 1931, 1932 and 1933, plaintiff neglected to file a return of its income from sources within the United States and no such return for any year was filed by plaintiff or by any one on its behalf, at Baltimore, Maryland, or at any other place, so that neither the gain from the 1929 exchange hereinabove referred to, nor any of the dividends received in the subsequent years, has ever been taxed. The failure to file a return for each year was willful and with the purpose and intent of evading the income tax on the income of plaintiff from sources within the United States and with intent to defraud the United States of its tax with respect to that income.

6. At all times from November 22, 1929 to and including the present time, plaintiff through and by its agents and representatives has willfully and fraudulently concealed and secreted the aforesaid gain or profit and income from the Bureau of Internal Revenue and willfully and intentionally misrepresented to agents of the Bureau of Internal Revenue material facts in connection with the aforesaid gain or profit, and income.

7. On or about September 21, 1948, the Commissioner of Internal Revenue, pursuant to and in compliance with the rules and regulations of the Bureau of Internal Revenue, notified the Office of Alien Property of a pending tentative tax liability in the amount of $11,112,000.00 against the plaintiff herein for the years 1929 to 1933 inclusive and directed that the Commissioner of Internal Revenue should be advised

2175 of any proposed release of property which would reduce the value of the property held in the account of plaintiff to an amount less than $11,112,000.00.

8. On or about October 27, 1948, pursuant to the Rules and Regulations of the Bureau of Internal Revenue, the Office of Alien Property, Department of Justice, notified the Commissioner of Internal Revenue that the plaintiff herein had instituted an action seeking a return of its alleged property held by defendants herein by virtue of

aforesaid Vesting Orders Nos. 5, 907, 6718, 6767, 6768, 6769 and 7874.

9. On or about November 12, 1948, the Commissioner of Internal Revenue notified the Alien Property Custodian that on information and facts he had determined that for the calendar years 1929, 1930, 1931, 1932 and 1933 the plaintiff had net income of not less than $34,119,976.28 and that an adjustment of the plaintiff's income tax liability for each year appeared warranted and that such adjustment of the deficiencies with penalties was in the aggregate amount of $6,602,248.56.

10. Thereafter, on an assessment list dated January 28, 1949, the Commissioner of Internal Revenue assessed against the plaintiff taxes, interest, and penalties as follows:

Year	Income Tax	25% Penalty	50% Penalty	Interest	Total
1929	$3,594,101.72	$898,525.43	$1,797,050.86	$2,775,730.45	$9,065,408.46
1930	95,042.64	23,760.66	47,521.32	67,699.00	234,023.62
1931	59,042.64	14,760.66	29,521.32	38,513.59	141,838.21
1932	16,228.03	4,057.01	8,114.02	9,611.88	38,010.94
1933	6,085.51	1,521.38	3,042.76	3,239.32	13,888.97
	Excess Profits Tax				
1933	2,212.91	553.23	1,106.46	1,177.93	5,050.53
					$9,498,220.73

The assessment list showing these assessments was certified to the Collector of Internal Revenue at Baltimore, Maryland, on, to-wit, January 28, 1949, and received in his office on that day or the next, and immediately upon such receipt in his office the Collector of Internal Revenue gave notice to the taxpayer (plaintiff) and made demand for payment, but no part of the tax so assessed, listed, and demanded has ever

2176 been paid. If the plaintiff has a property right with respect to any property sued for in this action the United States of America has and claims a lien thereon as property belonging to a delinquent taxpayer as provided by Section 3670 et seq. of the Internal Revenue Code. On or about February 3, 1949, the Commissioner of Internal Revenue notified Tom C. Clark, Attorney General, as suc-

cessor to the Alien Property Custodian, of the assessment of these taxes, penalties, and interest in the aggregate of $9,498,220.73; but the tax so assessed or any part thereof has not been paid.

WHEREFORE:

1. the defendants demand judgment dismissing the complaint herein, together with the costs and disbursements in the action,

2. the defendant J. Howard McGrath, Attorney General, demands judgment on the First Counterclaim for and on behalf of the United States, in the amount of $9,498,220.73, with interest.

Dated: Washington, D. C., March 4, 1949.

/s/ HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

/s/ DAVID SCHWARTZ,
Chief Trial Attorney.

/s/ SIDNEY B. JACOBY,
/s/ PAUL E. MCGRAW,
/s/ PAUL F. MYERS,
/s/ LEON YUDKIN,
/s/ DAVID A. WILSON, JR.,
/s/ OLGA H. HOFFMANN,
/s/ ANTHONY W. GROSS,
Attorneys,
Office of Alien Property.

/s/ WM. B. WALDO,
Attorney,
Tax Division,
Department of Justice,
Attorneys for the Defendants.

Service of a copy acknowledged this ___ day of March, 1949.

Exhibit A.

VESTING ORDER PURSUANT TO SECTION 5(b) OF THE TRADING WITH THE ENEMY ACT, AS AMENDED.

I, HENRY MORGENTHAU, JR., Secretary of the Treasury, acting under and by virtue of the authority vested in me by the President pursuant to section 5(b) of the Act of October 6, 1917, as amended by section 301 of the First War Powers Act, 1941, finding after investigation that the following shares of the stock of the General Aniline & Film Corporation, a corporation organized under the laws of the State of Delaware, are the property of nationals of a foreign country designated in Executive Order No. 8389, as amended, as defined therein, and that the action herein taken is in the public interest, do hereby order and declare that such shares including all interest therein are hereby vested in the Secretary of the Treasury to be held, sued, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States:

Certificate Number	Number of shares	Class of shares	Registered in the name of
027	1,500	A	Geheimrat Professor Dr. Carl Bosch, Ludwigshafen, Germany
028	500	A	Geheimrat Professor Dr. Carl Bosch, Ludwigshafen, Germany
023	1,500	A	Geheimrat Dr. Hermann Schmitz, Berlin, Germany
029	500	A	Geheimrat Dr. Hermann Schmitz, Berlin, Germany
0656	20,000	A)	
0657	10,000	A)	
0658	10,000	A)	
0659	10,000	A)	
0660	5,000	A)	
0661	5,000	A)	Osmon Aktiengesellschaft, Schaffhausen, Switzerland
0662	5,000	A)	
0663	500	A)	
0664	500	A)	
0665	500	A)	
0720	132	A)	

Certificate Number	Number of shares	Class of shares	Registered in the name of
022	300,000	A)	
137	100	A)	
061	50	A)	
065	90	A)	
092	726	A)	Internationale Gesellschaft fur Chemische Unternehmungen Aktiengesellschaft, Basel, Switzerland
095	500	A)	
0568	10,000	A)	
0569	10,000	A)	
0570	10,000	A)	
0571	10,000	A)	
0572	10,000	A)	
0578	10,000	A)	
0574	5,000	A)	
0575	5,000	A)	
0576	5,000	A)	Internationale Gesellschaft fur Chemische Unternehmungen Aktiengesellschaft, Basel, Switzerland
0577	5,000	A)	
0578	5,000	A)	
0579	1,000	A)	
0580	1,000	A)	
0581	1,000	A)	
0582	350	A)	
178 BB13	650,000	B	L. D. Pickering & Company in custody for N. V. Maatschappij voor Industrie en Handelsbelangen, Amsterdam, The Netherlands
32	100,000	B)	N. V. Maatschappij voor Industrie en Handelsbelangen, Amsterdam, The Netherlands
33	100,000	B)	
34	100,000	B)	
1	400,000	B)	Chemo Maatschappij voor Chemische Ondernehmungen, Amsterdam, The Netherlands
20	200,000	B)	
4	500,000	B	Banque Federale (Eidgenoessische Bank, A. G.), Zurich, Switzerland

Such property and any proceeds thereof shall be held in special account pending further determination of the Secretary of the Treasury. This shall not be deemed to limit the power of the Secretary of the Treasury to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return or compensation should be made.

Any person not a national of a foreign country designated in Executive Order No. 8389, as amended, asserting any interest in said shares of stock or any party asserting

any claim as a result of this Order may file with the Secretary of the Treasury a notice of his claim, together with a request for hearing thereon, on Form TFVP-1 within one year of the date of this Order, or within such further time as may be allowed by the Secretary of the Treasury.

This Order shall be published in the Federal Register.

By direction of the President:

/s/ H. Morgenthau, Jr.,
Secretary of the Treasury.

February 16, 1942.

* * *

2180 **Exhibit C.**

OFFICE OF ALIEN PROPERTY CUSTODIAN
WASHINGTON

Vesting Order Number 907.

Re: Certain capital stock and other interests in General Aniline & Film Corporation

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation:

(a) Finding that I. G. Farbenindustrie, A. G., whose last known address was represented to the undersigned as being Frankfurt, Germany, is a national of a designated enemy country (Germany);

(b) Finding that the shares of stock (constituting a substantial part, namely, approximately 97% of all outstanding shares) of General Aniline & Film Corporation, a Delaware corporation, which is a business enterprise within the United States, which shares were covered by vesting order issued by the Secretary of the Treasury under date of February 16, 1942, and which are described therein, and which are thereafter vested by the under-

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signed pursuant to Vesting Order No. 5 of April 24, 1942, and delivered to the undersigned by the Secretary of the Treasury, were, prior to such vesting thereof by the Secretary of the Treasury, owned by or held for the benefit of said I. G. Farbenindustrie, A. G.;

(c) Finding, therefore, that said business enterprise is a national of a designated enemy country (Germany);

(d) Finding that 16,186 shares (other than the shares referred to in subparagraph (b) and those vested by the undersigned pursuant to Vesting Order Number 155 of September 19, 1942), of Class A common stock of said business enterprise are owned by or held for the benefit of nationals of designated enemy countries (Japan and Germany), the names in which such shares are registered and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each, are respectively set forth in Exhibit A attached hereto and made a part hereof;

(e) Determining, therefore, that said 16,186 shares of stock are interests in the aforesaid business enterprise held by nationals of designated enemy countries (Japan and Germany);

(f) Finding that all right, title, interest and claim of any name or nature whatsoever of H. Sturzenegger and Company of Basle, Switzerland, in and to all indebtedness, contingent or otherwise and whether or not matured, owing to said company by William H. vom Rath, including but not limited to all security rights in and to any and all collateral (including 300 shares of Class A common stock of General Aniline & Film Corporation, registered in the name of William H. vom Rath) for

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any or all of such indebtedness and the right to enforce and collect such indebtedness, is property of a company which is presently on the Proclaimed List of Certain Blocked Nationals promulgated pursuant to Proclamation 2497 of the President of the United States of America of July 17, 1941 and which is owned or controlled by the aforesaid I. G. Farbenindustrie, A. G., and, therefore, is property within the United States owned by a national of a designated enemy country (Germany) and also is an interest in the aforesaid business enterprise owned by or controlled by a national of a designated enemy country (Germany);

2181 (g) Finding that 36 shares of $1.00 par value common stock of Agfa Ansco Corporation of New York, the holders of which are entitled to receive (pursuant to a merger agreement executed in 1939 under the terms of which said Agfa Ansco Corporation of New York was absorbed by General Aniline & Film Corporation) one share of Class A common stock of General Aniline & Film Corporation for each three shares of such stock of Agfa Ansco Corporation of New York, are owned by or held for the benefit of nationals of Germany and Hungary, the names in which such shares are registered and the names and last known address of the persons for whom such shares are held and the number of shares held for each are respectively set forth in Exhibit B attached hereto and made a part hereof;

(h) Finding, therefore, that such shares of stock of Agfa Ansco Corporation of New York are interests in the aforesaid business enterprise held by nationals of designated enemy countries (Germany and Hungary);

(i) Finding that 28 shares $1.00 par value common stock of Agfa Ansco Corporation of Delaware, the holders of which are entitled to receive (pursuant to a merger agreement executed in 1939 under the terms of which said Agfa Ansco Corporation of Delaware was absorbed by General Aniline & Film Corporation) one share of Class A common stock of General Aniline & Film Corporation for each three shares of such stock of Agfa Ansco Corporation of Delaware, are owned by or held for the benefit of nationals of Germany, the names in which such shares are registered and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are respectively set forth in Exhibit C attached hereto and made a part hereof;

(j) Finding, therefore, that such shares of stock of Agfa Ansco Corporation of Delaware are interests in the aforesaid business enterprise held by nationals of a designated enemy country (Germany);

(k) Determining that to the extent that any or all of the aforesaid nationals are persons not within a designated enemy country, the national interest of the United States requires that each such person be treated as a national of one of the aforesaid designated enemy countries (Germany, Japan, or Hungary);

(l) Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order of Act or otherwise; and

(m) Deeming it necessary in the national interest;

hereby vests in the Alien Property Custodian the shares of stock and other interests described in subparagraphs

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(d), (f), (g) and (i) to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in a special account pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

2182 Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1 within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national", "designated enemy country" and "business enterprise within the United States" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Executed at Washington, D. C. on February 15, 1943.

(Signed) LEO T. CROWLEY.

LEO T. CROWLEY.

(Official Seal)

EXHIBIT A

16,186 shares of Class A common stock of General Aniline & Film Corporation, the names in which such shares are registered, and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are, respectively, as follows:

Names in which registered	Names and last known addresses of persons for whom they are held	Number of shares
Brown Brothers Harriman and Company	I. G. Farbenindustrie, A. G. Frankfurt, Germany	15,950
Brown Brothers Harriman and Company	H. Sturzenegger and Company of Basle, Switzerland (subsidiary of I. G. Farbenindustrie, A. G. and presently on The Proclaimed List of Certain Blocked Nationals promulgated pursuant to Proclamation 2497 of the President of the United States of America of July 17, 1941)	191
Hurley & Company	Ing. Franz Niasl Vienna, Germany	10
Hurley & Company	Benjamin Kopf Yokohama, Japan	13
Hurley & Company	Deutsche Landerbank, A. G. Berlin, Germany (sub a/c Customers Deposit)	1
Hurley & Company	Exportkreditbank, A. G Berlin, Germany (sub a/c Customers Account for Custody)	1
Egger & Company	Deutsche Zentralgenossenschaftskasse Berlin, Germany (sub a/c Clients Account)	2
Egger & Company	Frankfurter Bank Frankfurt A. M., Germany (sub a/c Clients Account)	16
Egger & Company	Vermoegensverwaltung und Abwicklungsstelle, G.m.b.H. Muenchen, Germany	2
	Total	16,186

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EXHIBIT B

36 shares of $1.00 par value common stock of Agfa Ansco Corporation of New York, the names in which such shares are registered, and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are, respectively, as follows:

Names in which registered	Names and last known addresses of persons for whom they are held	Number of shares
Fritz Buschbaum	Fritz Buschbaum Darmstadt, Germany	4
Gisella Fejer	Gisella Fejer Budapest, Hungary	8
Waldemar Jungheinrich	Waldemar Jungheinrich Land, Germany	14
Rudolf Otto Sandmann	Rudolf Otto Sandmann Hamburg, Germany	2
Hans Vatter	Hans Vatter Manheim, Germany	3
Karl Von Hagen	Karl Von Hagen Darmstadt, Germany	5
	Total	36

EXHIBIT C

28 shares of $1.00 par value common stock of Agfa Ansco Corporation of Delaware, the names in which such shares are registered, and the names and last known addresses of the persons for whom such shares are held and the number of shares held for each are, respectively, as follows:

Names in which registered	Names and last known addresses of persons for whom they are held	Number of shares
Herman Buhre	Herman Buhre Antona, Germany	6
Johann Herzer and Zenta Herzer	Johann Herzer and Zenta Herzer Marquartstein, Germany	2
Freiherr Gotz von Wangenheim	Freiherr Gotz von Wangenheim Wein, Germany	20
	Total	28

* * *

2196 Filed January 26, 1950. Harry M. Hull, Clerk.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELES ET COMMERCIALES S. A., ETC. (I. G. CHEMIE),
Plaintiff,

v.

J. HOWARD McGRATH, *et al.*,
Defendants,

REMINGTON RAND, INC.,
Intervenor Plaintiff.

Supplemental Answer.

SECOND COUNTERCLAIM

Second Counterclaim by defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian:

(1) This Court has jurisdiction over this counterclaim under Sections 1345 and 1346(c) of the Judicial Code (U. S. C., Tit. 28, Secs. 1345, 1346(c) and under Section 17 of the Trading with the Enemy Act (U. S. C., Tit. 50 App., Sec. 17).

(2) On February 16, 1942, April 24, 1942 and February 15, 1943, the Secretary of the Treasury and the Alien Property Custodian executed and issued an unnumbered Vesting Order, Vesting Order No. 5, and Vesting Order No. 907 whereby, *inter alia*, 2,050,000 of the common B shares and 475,655 of the common A shares of the stock of General Aniline & Film Corporation, a Delaware corporation, were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Certified copies of said Vesting Orders are attached to the Answer on file in this

2197 action. Plaintiff has brought suit, in this action, for the return of 2,050,000 common B shares and 455,624

common A shares of said stock, being all of the stock vested as aforesaid except 20,031 common A shares, which the plaintiff does not claim.

(3) Prior to the issuance of the aforementioned Vesting Orders, General Aniline & Film Corporation had acquired and at the time of vesting held as lawful owner 28,600 50%-paid and 56,300 100%-paid bearer shares of the common stock of the plaintiff corporation.

(4) Between December 1, 1944 and October 18, 1946 General Aniline & Film Corporation paid and transferred to the predecessors of the defendant J. Howard McGrath as Alien Property Custodian, as dividends on the vested shares of General Aniline & Film Corporation, 28,238 50%-paid and 55,610 100%-paid bearer shares of the common stock of the plaintiff corporation. The defendant McGrath and his predecessors as Alien Property Custodian have at all times thereafter held said shares as lawful owner thereof. Of these shares, 27,416 50%-paid shares and 53,984 100%-paid shares were paid and transferred as dividends on the shares of General Aniline & Film Corporation for the return of which the plaintiff has brought this suit, and 822 50%-paid and 1,626 100%-paid shares were paid and transferred as dividends on the 20,031 shares of common A stock of General Aniline & Film Corporation, which the plaintiff does not claim.

(5) At a special meeting of the stockholders of the plaintiff corporation held at Basle, Switzerland, on December 19, 1945, a resolution was adopted amending the by-laws of the corporation to provide for the issuance of registered shares in place of the then outstanding bearer shares. The resolution provided that in order to obtain registered shares the holders

2198 of bearer shares were required to submit applications for registration to the plaintiff corporation, or its agents, accompanied by the bearer certificates. No sanction or penalty was provided for the failure of a stockholder to present the shares for registration and no such

presentation has been made by the defendant or his predecessors.

(6) Thereafter, at another stockholders' meeting of the plaintiff corporation held at Basle, Switzerland, on November 22, 1948, a resolution was adopted calling in the 50%-paid shares of the corporation. The stockholders holding 50%-paid shares were given an election either to pay the 50% still due on the shares or to convert their 50%-paid shares into 100%-paid shares on the basis of two for one. The election was required to be made not later than February 10, 1949 on pain of cancellation and forfeiture of all rights of the stockholder, including the original payment of 50%.

(7) On or prior to February 10, 1949, the defendant's predecessor, in conformity with the resolution of November 22, 1948 and through the Basle agency of the Swiss Bank Corporation as agent, presented to the plaintiff the 822 50%-paid bearer shares referred to in paragraph (4) hereof together with applications duly filled out for conversion of said stock into 100%-paid shares. On or about February 19, 1949 the plaintiff informed said agent that the 822 shares had been duly received and converted into 411 100%-paid shares. On or about May 11, 1949 plaintiff refused to recognize the defendant's predecessor as holder in due course of the 822 shares presented, refused to deliver the 411 100%-paid shares issued in place of the 822 50%-paid shares, and retained, seized and confiscated said shares and converted them to its own use, all unlawfully.

(8) The value of each of said 411 100%-paid shares on May 11, 1949 was $163.33, and their total value was $67,128.63.

2199 THIRD COUNTERCLAIM

Third Counterclaim by defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian:

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(1)-(7) The defendant incorporates into and makes a part of this counterclaim the averments contained in paragraphs (1) to (7) of the Second Counterclaim.

(8) Because of the acts of the plaintiff described in paragraph (7) hereof, and because of other acts and statements of the plaintiff, the defendant believes and avers that a presentation of the certificates representing the 1,626 100%-paid shares referred to in paragraph (4) hereof for the purpose of their registration in defendant McGrath's name pursuant to the stockholders' resolution of December 19, 1945, described in paragraph (5) hereof, would be futile and that, if presentation were made, the plaintiff would unlawfully retain, seize and confiscate the certificates and convert them to its own use.

(9) The denial by the plaintiff of defendant's title to, and the conversion by the plaintiff to its own use of, the 411 100%-paid shares in plaintiff corporation, all as described in paragraph (7) hereof, and the other acts and statements of the plaintiff referred to in paragraph (8) hereof, were a denial of and a refusal to recognize defendant's status as the owner and holder in due course of the 1,626 100%-paid shares in plaintiff corporation referred to in paragraph (4) hereof. Said denial was in violation of plaintiff's obligation to its stockholders and in particular to defendant McGrath as its stockholder, and has rendered said 1,626 shares worthless.

(10) The value of each of said 1,626 100%-paid shares on May 11, 1949 was $163.33, and their total value was $265,574.58.

2200 FOURTH COUNTERCLAIM

Fourth Counterclaim by defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian:

(1) This Court has jurisdiction over this counterclaim under Sections 1345, 1346(c), 2201 and 2202 of the Judicial Code (U. S. C., Tit. 28, Secs. 1345, 1346(c), 2201, 2202)

and under Section 17 of the Trading with the Enemy Act (U. S. C., Tit. 50 App., Sec. 17).

(2)-(7) The defendant incorporates into and makes a part of this counterclaim the averments contained in paragraphs (2) to (7) of the Second Counterclaim.

(8) On February 3, 1949, an order was entered in this action which required the plaintiff to extend until 90 days after the termination of this proceeding the time within which defendants may present the 27,416 50%-paid shares referred to in paragraph (4) hereof for conversion into 100%-paid shares. Reference is made to said order and leave is prayed to incorporate its provisions herein.

(9) Because of the acts of the plaintiff described in paragraph (7) hereof, and because of other acts and statements of the plaintiff, the defendant believes and avers that a presentation of the certificates representing the said 27,416 50%-paid shares within the time permissible under the order of this Court of February 3, 1949, described in paragraph (8) hereof, for the purpose of their registration in defendant McGrath's name pursuant to the stockholders' resolution of December 19, 1945 described in paragraph (5) hereof, or for the purpose of their conversion into 100%-paid stock pursuant to the stockholders' resolution of November 22, 1948, described in paragraph (6) hereof, would be futile and that, if presentation were made, the plaintiff would unlawfully retain, seize and confiscate the certificates and convert them to its own use.

2201 (10) The denial by the plaintiff of defendant's title to, and the conversion by the plaintiff to its own use of, the 411 100%-paid shares in plaintiff corporation, all as described in paragraph (7) hereof, and the other acts and statements of the plaintiff referred to in paragraph (9) hereof, were a denial of and a refusal to recognize defendant's status as the owner and holder in due course of the said 27,416 50%-paid shares in plaintiff corporation referred to in paragraph (4) hereof. Said denial was in violation of plaintiff's obligation to its stockholders

and in particular to defendant McGrath as its stockholder, and has created a cloud on defendant McGrath's title to said 27,416 50%-paid shares and has rendered them worthless.

(11) The value of each of said 27,416 50%-paid shares on May 11, 1949, was $99.23, and their total value was $2,720,489.68.

FIFTH COUNTERCLAIM

Fifth Counterclaim by defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian:

(1) This Court has jurisdiction over this counterclaim under Sections 1345, 1346(c), 2201 and 2202 of the Judicial Code (U. S. C., Tit. 28, Secs. 1345, 1346(c), 2201, 2202) and under Section 17 of the Trading with the Enemy Act (U. S. C., Tit. 50 App., Sec. 17).

(2)-(7) The defendant incorporates into and makes a part of this counterclaim the averments contained in paragraphs (2) to (7) of the Second Counterclaim.

(8) Because of the acts of the plaintiff described in paragraph (7) hereof, and because of other acts and statements of the plaintiff, the defendant believes and avers that a presentation of the certificates representing the 53,984 100%-paid shares, referred to in paragraph (4)

2202 hereof, for the purpose of their registration in defendant McGrath's name pursuant to the stockholders' resolution of December 19, 1945, described in paragraph (5) hereof, would be futile, and that, if presentation were made, the plaintiff would unlawfully retain, seize and confiscate the certificates and convert them to its own use.

(9) The denial by the plaintiff of defendant's title to, and the conversion by the plaintiff to its own use of, the 411 100%-paid shares in plaintiff corporation, all as described in paragraph (7) hereof, and the other acts and statements of the plaintiff referred to in paragraph (8) hereof, were a denial of and a refusal to recognize de-

fendant's status as the owner and holder in due course of the 53,984 100%-paid shares in plaintiff corporation referred to in paragraph (4) hereof. Said denial was in violation of plaintiff's obligation to its stockholders and in particular to defendant McGrath as its stockholder, and has created a cloud on defendant McGrath's title to said 53,984 100%-paid shares and has rendered them worthless.

(10) The value of each of said 53,984 100%-paid shares on May 11, 1949, was $163,33, and their total value was $8,817,206.72.

SUPPLEMENTAL PRAYERS FOR RELIEF

3. The defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, demands that he have judgment against the plaintiff on the Second Counterclaim for the sum of $67,128.63, with interest, costs and disbursements.

4. The defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, demands that he have judgment against the plaintiff on the Third Counterclaim for the sum of $265,574.58, with interest, costs and disbursements.

2203 5. The defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, demands, with respect to the Fourth Counterclaim

(a) that the court adjudge and declare that he is the lawful owner of the 27,416 50%-paid shares in the plaintiff corporation which are the subject of the Fourth Counterclaim, subject only to such rights as the plaintiff may establish in this action in the shares of General Aniline & Film Corporation on which said 27,416 50%-paid shares were paid to the defendant as dividends;

(b) that in the event the plaintiff establishes no rights in the shares of General Aniline & Film Corporation on which said 27,416 50%-paid shares were

paid as dividends, defendant McGrath have judgment against the plaintiff for the sum of $2,720,489.68, with interest, costs and disbursements.

6. The defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, demands; with respect to the Fifth Counterclaim

(a) that the court adjudge and declare that he is the lawful owner of the 53,984 100%-paid shares in the plaintiff corporation which are the subject of the Fifth Counterclaim, subject only to such rights as the plaintiff may establish in this action in the shares of General Aniline & Film Corporation on which said 53,984 100%-paid shares were paid to the defendant as dividends;

(b) that in the event the plaintiff establishes no rights in the shares of General Aniline & Film Corporation on which said 53,984 100%-paid shares were paid as dividends, defendant McGrath have judgment against the plaintiff for the sum of $8,817,206.72 with interest, costs and disbursements.

2204 7. The defendants demand such other and further relief as is just and proper in the premises.

/s/ Harold I. Baynton,
Acting Director, Office of Alien Property.
/s/ David Schwartz,
Special Assistant to the Attorney General.
/s/ Sidney B. Jacoby,
/s/ Paul E. McGraw,
/s/ David A. Wilson, Jr.,
/s/ Olga H. Hoffmann,
/s/ Anthony W. Gross,
Attorneys for defendants,
Department of Justice,
Washington 25, D. C.

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Service of the foregoing Supplemental Answer acknowledged this 12th day of January, 1950.

/s/ JOHN J. WILSON,
Attorney for Plaintiff.

/s/ FRANK C. STERCK,
Attorney for Intervenor Plaintiff.

[Filed January 16, 1950]

[Served January 12, 1950.]

* * *

2208 Filed February 1, 1950. Harry M. Hull, Clerk.

Motion of Plaintiff to Modify Chief Judge Laws' Order of July 5, 1949.

Comes now the plaintiff, by its undersigned attorneys, and moves the Court to modify its order of July 5, 1949 to the extent that said order requires the plaintiff to produce for inspection and copying by the defendants the books, papers and records of H. Sturzenegger & Cie., and any lists in connection therewith.

This Court stated in its memorandum opinion of June 23, 1949, upon which the order of July 5, 1949 was based, as follows:

> "As to plaintiff's claim that it is not shown to have possession, custody or control of the papers and documents sought to be inspected and copied, the Court finds a prima facie case of control by plaintiff is made out. If it develops that plaintiff, after bona fide efforts to obtain access to records of its subsidiaries, affiliates and others in which plaintiff has an interest, is unable to produce them as ordered, the question of whether further action should be taken by the Court may be considered."

Plaintiff intends to comply with the order of this Court as it relates to its own records and to the records of its

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wholly owned corporate subsidiary, Osmon, A. G., to the extent that it has such records. Specifically, it does
2209 not have any lists as referred to in paragraph 1 item (b) on pages 2-3 of said order.

Plaintiff submits that it may be unable to produce the records of H. Sturzenegger & Cie., due to the following: (1) Under the laws of Switzerland this plaintiff never had the power by contract, law or judicial process to compel H. Sturzenegger & Cie. to deliver that firm's records to the plaintiff. (2) Hans Sturzenegger, the partner with unlimited liability, has indicated that he feels obliged to decline to permit the plaintiff to exhibit to the defendants the records of H. Sturzenegger & Cie. (3) A disclosure of the records of H. Sturzenegger & Cie. would constitute a violation of the Swiss penal laws. (4) Plaintiff no longer has even an interest in H. Sturzenegger & Cie.

Accordingly, plaintiff moves that said order of July 5, 1949, be modified by eliminating therefrom any requirement that the plaintiff produce the records of H. Sturzenegger & Cie., and any lists in connection therewith.

[Signed by counsel for plaintiff.]

* * *

2212 **Affidavit in Support of Plaintiff's Motion to Modify Order of July 5, 1949, and in Opposition to Defendants' Motion for an Amendment of Said Order.**

DISTRICT OF COLUMBIA, SS:

Walter Germann, being first duly sworn, does on oath depose and state that he is the managing director of the plaintiff corporation; that the plaintiff does not possess a list of the original documents taken by investigators of the Swiss Compensation Office from the plaintiff's premises for submission to said office; that Hans Sturzenegger, partner with unlimited liability in the firm of H. Sturzenegger & Cie., has indicated that he feels obliged to refuse to permit the plaintiff to display to the defendants for

inspection and copying its papers, records and books, described in the order of this Court dated July 5, 1949; that since August 27, 1949, plaintiff has had no participation in the said firm of H. Sturzenegger & Cie., because said participation was paid off by the ex parte action of the partner with unlimited liability and the limited partner pursuant to Article Fourteen (14) of the partnership agreement of March 28, 1941; that plaintiff does not now
2213 have, and never has had possession, custody or control of said books, papers and records (except that occasionally from time to time in the past, plaintiff has temporarily had possession of one or more files or papers of the Sturzenegger firm with the permission of said firm on account of their mutual interest in the subject matters thereof), and therefore plaintiff expects that it may be unable to produce them, as ordered by this Honorable Court, at the time fixed therefor in the future.

/s/ WALTER GERMANN.

[Sworn to February 1, 1950.]

2214 Affidavit in Support of Plaintiff's Motion to Modify Order of July 5, 1949, and in Opposition to Defendants' Motion for an Amendment of Said Order.

DISTRICT OF COLUMBIA, SS:

Hans Sturzenegger, being first duly sworn, on oath deposes and states that he is a citizen and resident of Switzerland, and is the partner with unlimited liability in the firm of H. Sturzenegger & Cie.; that Industriebank, A. G., a Swiss corporation, is a limited partner in said firm; that since August 27, 1949 no one else, including the plaintiff, has had any participation in said firm; that pursuant to Article Fourteen (14) of the firm partnership agreement of March 28, 1941, the firm Sturzenegger pursuant to decision of affiant and Industriebank paid off the participation of plaintiff in said firm and thereby plaintiff ceased

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to have any interest in said firm; that said Article Fourteen (14) (in translation) provides as follows:

"The other partners have the right to pay off the sleeping partner for his capital stake at any time (also in case of dissolution) with one month's notice, as follows:

In the year 1941 by paying out a sum to the amount of 140% of the nominal stake,

In the year 1942 and ff. should the contract be prolonged—if no new agreement is concluded—by
2215 paying out a sum to the amount of 150% of the nominal stake.

Should the sleeping partner withdraw by reason of his own termination, the other partners are entitled to compensate him according to the above scale, whereby, however, the premium is only to be paid out to half its amount,

The compensation of the sleeping partner can in any case be carried out completely or partially by delivery of securities instead of payment, in which case the securities offered are in principle to be calculated at the exchange value at the time of the compensation.

As necessary it is to be determined at the beginning of every year by agreement between the partners, what securities are admissible for the compensation—should it take place in the course of the year involved.

The sleeping partner herewith expressly renounces asserting his claims on the basis of a liquidation balance-sheet should he be compensated according to the preceding method within three months from the notice of discharge."

that the Sturzenegger firm gave notice to plaintiff on May 27, 1949 of their intention to pay off, and payment was made on August 27, 1949; that plaintiff does not now have, and

never has had the possession, custody or control of the books, papers and records of said firm (except that occasionally, from time to time in the past, plaintiff has temporarily had possession of one or more files or papers of the Sturzenegger firm with affiant's permission on account of their mutual interest in the subject matters thereof); that said firm is a private banking house located at Basle, Switzerland, whose books, papers and records (also located in Switzerland) are subject to the banking and penal secrecy laws of Switzerland; that affiant's firm does not possess a list of the original documents taken by investigators of the Swiss Compensation Office from the firm's premises for submission to said office; that the firm's documents, ordered to be produced at some future date by the plaintiff, are located amongst hundreds of thousands of papers and are not distinguishable therefrom; that such documents probably relate to thirty years of business transactions, and undoubtedly weigh many tons; that affiant feels

2216 obliged to decline to permit the plaintiff to exhibit the firm's records to the defendants, and has so indicated to the plaintiff.

/s/ HANS STURZENEGGER.

[Sworn to February 1, 1950.]

2217 Filed February 1, 1950. Harry M. Hull, Clerk.

Memorandum in Opposition to Defendants' Motion for an Amendment of Chief Judge Laws' Order of July 5, 1949.

Chief Judge Laws' order of July 5, 1949, provides, amongst other things, for the plaintiff to produce for inspection in Switzerland books, papers and documents of H. Sturzenegger & Cie. Defendants seek an amendment of

this order to require the plaintiff to produce such records here.

The plaintiff opposes the motion upon the following grounds:

(a) It expects that it may be unable to produce the records of H. Sturzenegger & Cie. for the reasons stated in its motion, filed simultaneously herewith, for modification of said order of July 5, 1949.

(b) It would be a tremendous physical undertaking to produce such records here. Literally, many tons of papers are involved. They cover thirty years of business. Specifically, they are designated at 450 files, 55,000 documents and 110 books of account. The 55,000 documents, said to have been examined by the Swiss Compensation Office, are not distinguishable from other papers, but are located amongst many hundreds of thousands of papers.

2218 Neither plaintiff nor H. Sturzenegger & Cie. has a list such as is described in paragraph 1, item (b) on pages 2-3 of the order

(c) Such an order as the defendants seek would direct and require the plaintiff and its officers, and H. Sturzenegger & Cie. to remove documents from within Switzerland in order to violate the Swiss secrecy laws. It is believed that the Confederation of Switzerland might not permit its citizens to do this.

Assuming, *arguendo*, that the law of the forum determines the question of privilege of secrecy, as claimed by a witness testifying at the forum, that is not the same proposition as is presented here. Here, the Court's order would be executed in Switzerland itself. That the Court has jurisdiction over the person of the plaintiff to enforce its orders by contempt or other sanctions, such as in specific

performance, is not an answer to the problem. The records are physically located in Switzerland. Switzerland makes it a crime (Article 273) to disclose the contents of these documents to an "outsider". The order of this Court would direct a Swiss citizen to remove such records from Switzerland for the purpose of keeping Switzerland from preventing the commission of a crime, and with the effect of actually committing one.

This conflict is obviously a tremendously serious one which should not be resolved judicially, but should be left where it belongs, namely, in the field of international relations. At least, a reasonable opportunity should be afforded the parties to ascertain whether there is a diplomatic interest in the situation. A delay of, say, thirty days in this respect could not operate to the prejudice of anyone.

The claim will, no doubt, be made by the defendants that the plenary power of the Court, in respect of litigation pending before it, is being nullified by this contention. Ordinary depositions are surely an attribute of such plenary power, yet no one would seriously argue that the inability

of

2219 a party to take a deposition in a foreign country

would not be countenanced or tolerated by the forum; or, stated differently, that sanctions should be imposed against a party because, forsooth, the country of which he is a citizen would not permit depositions to be taken there.

Also, it may be asked: Why is there one rule for the plaintiff's own documents, and another for those of H. Sturzenegger & Cie? The answer is the same as when, with or without reason, one person chooses to take a risk, and another declines. Plaintiff is *the* plaintiff here. It seeks relief in this Court and will try to comply with orders

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affecting its own property. [It will assume the risk of criminal responsibility in Switzerland.] It is a holding company which deals only with its own property. On the other hand, H. Sturzenegger & Cie. is a private banking house which, apparently, cannot take such risks. It deals with the money of others. It is confronted, also, by the banking secrecy laws of Switzerland.

For the foregoing reasons, defendants' motion should be denied.

[Signed by counsel for plaintiff.]

* * *

2220 Filed February 14, 1950. Harry M. Hull, Clerk.

Order Referring Action to Special Master.

It appearing that this action involves exceptional circumstances due to protracted testimony of witnesses in the United States, as well as abroad, the production before trial for examination and the production at the trial as evidence of a large number of documents and other papers, the determination of motions and objections made by the parties and other questions which may not be readily and expeditiously determined by applications to the Court, and that, accordingly, a reference of the case to a Special Master is required, it is, this 14th day of February, 1950,

ORDERED, that William J. Hughes, Jr., Esquire, a member of the bar of this Court, is hereby appointed Special Master and there is referred to him as such the determination and findings of all issues of fact and law involved in said action excepting only those in the proceedings in intervention now on trial in this Court.

The Master shall have all the powers and duties which by law may be conferred upon or exercised by a master. His findings of fact shall have the force provided in Rule 53(e)(2) of the Federal Rules of Civil Procedure. He shall hear and pass upon all motions hereafter filed except

motions to vary orders already made, motions to punish for contempt, or other motions which would change the
2221 nature of the action or of this reference. He shall attend the taking of all depositions and discovery proceedings where witnesses are to be examined, except upon written stipulation of counsel or order of Court. He shall also have power to determine the time of taking depositions and resuming the deposition of Hans Sturzenegger now suspended.

The defendants shall from time to time advance to the Special Master from funds which are sought to be recovered by plaintiff in this suit, such expenses as the Special Master may incur and such sums on account of the Master's compensation as the Court may from time to time allow, but there shall be reserved for future determination by the Court the question as to whether such expenses shall be charged against one or both of the parties.

Plaintiff is required, within thirty days, to file an undertaking in the amount of Five Thousand Dollars ($5,000), which may be increased from time to time by the Court, as security for costs or charges which may be assessed against it in this action.

/s/ Bolitha J. Laws,
Chief Judge.

2222 Filed February 15, 1950. Harry M. Hull, Clerk.

Exhibits to Memorandum in Opposition to Plaintiff's Motion to Eliminate the Sturzenegger Records From the Order of July 5, 1949.

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EXHIBIT B.

COPY

DEPARTMENT OF STATE
WASHINGTON

In reply refer to
L/E

February 14, 1950

My dear Mr. Baynton:

Reference is made to your letter of February 7, 1950 to Walter S. Surrey concerning the motion of the Department of Justice that the Court call upon Mr. Hans Sturzenegger to produce the records of his firm in the United States.

You have pointed out that in the papers submitted by the plaintiff in opposition to the motion the plaintiff offered as an excuse to such a demand by the Court that compliance with the demand might be in violation of the Swiss secrecy laws, that the matter should not be resolved judicially, but be left in the field of international relations, and that a reasonable opportunity should be afforded the parties to ascertain whether there is a diplomatic interest in the situation.

In answer to your inquiry, the Department desires to state that it does not consider the matter is of diplomatic interest to it. The Department believes that in a suit which has been brought in the United States by the plaintiff, the plaintiff is subject to the normal rules of proof and production of records obtaining in the United States courts.

Sincerely yours,

/s/ ADRIAN S. FISHER,
/t/ ADRIAN S. FISHER,
The Legal Adviser.

THE HONORABLE HAROLD I. BAYNTON,
Acting Director, Office of Alien Property, Department of Justice,
Washington, D. C.

EXHIBIT C.

COPY

HLB:JDH:DS:AS
9-21-1335

February 7, 1950

BY MESSENGER

Mr. Walter S. Surrey,
Assistant Legal Adviser for
Economic Affairs,
Department of State,
Washington 25, D. C.

Re: I. G. Chemie v. McGrath

Dear Mr. Surrey:

This Office would like the views of your Department on a question in the case of *I. G. Chemie v. McGrath* in preparation for a hearing before the District Court for the District of Columbia in the near future. We have already given you a set of the motion papers involved, but a preliminary statement of the background of the question may be helpful.

On July 5, 1949 the District Court for the District of Columbia, per Chief Judge Laws, entered an order requiring I. G. Chemie to produce in Basle, Switzerland, certain records of the firm of H. Sturzenegger et Cie., for inspection and copying by the defendants. The time fixed for the production was thirty days after the termination of the deposition of Mr. Hans Sturzenegger. That deposition has not yet terminated.

Recently defendants learned that Mr. Sturzenegger would not permit I. G. Chemie to produce the records of his firm, and that one of the excuses which might be offered by I. G. Chemie or Mr. Sturzenegger might be the Swiss secrecy laws. Accordingly, on January 25 we made a motion for an amendment of Chief Judge Laws' order of July 5, 1949 so as to provide that the Sturzenegger records be produced in the United States and not in Basle, Switzer-

land. In opposition, I. G. Chemie has now filed a motion to modify the order of July 5, 1949 by eliminating entirely the requirement that the Sturzenegger records be produced. Among the grounds are that the disclosure of the records of the Sturzenegger firm would constitute a violation of Article 273 of the Swiss Penal Code and Article 47 of the Swiss Bank Law. Chemie maintains, however, that it will produce its own records, presumably in equal violation of Article 273.

2235 In partial opposition to our motion that the records be produced in the United States, plaintiff states as follows:

> (c) Such an order as the defendants seek would direct and require the plaintiff and its officers, and H. Sturzenegger & Cie. to remove documents from within Switzerland in order to violate the Swiss secrecy laws. It is believed that the Confederation of Switzerland might not permit its citizens to do this.
>
> Assuming, *arguendo*, that the law of the forum determines the question of privilege of secrecy, as claimed by a witness testifying at the forum, that is not the same proposition as is presented here. Here, the Court's order would be executed in Switzerland itself. That the Court has jurisdiction over the person of the plaintiff to enforce its orders by contempt or other sanctions, such as in specific performance, is not an answer to the problem. The records are physically located in Switzerland. Switzerland makes it a crime (Article 273) to disclose the contents of these documents to an "outsider". The order of this Court would direct a Swiss citizen to remove such records from Switzerland for the purpose of keeping Switzerland from preventing the commission of a crime, and with the effect of actually committing one.
>
> This conflict is obviously a tremendously serious one which should not be resolved judicially, but should be left where it belongs, namely, in the field of interna-

tional relations. At least, a reasonable opportunity should be afforded the parties to ascertain whether there is a diplomatic interest in the situation. A delay of, say, thirty days in this respect could not operate to the prejudice of anyone.

I invite your attention particularly to the last quoted paragraph which contains the suggestion that the problem be resolved in the field of international relations and, also, suggests a delay during which the parties can ascertain whether there is a "diplomatic interest" in the situation. In an effort to avoid any needless delay, I am writing you to ask whether your Department has any interest in the situation, diplomatic or otherwise, which should be brought to the attention of the court, any interest which might mitigate against the enforcement of the court order of July 5, 1949, either as it now stands or as either party in the case seeks to amend it, or any interest in a delay in the court's consideration or decision of the matter before it.

Sincerely yours,

HAROLD I. BAYNTON,
Acting Director.

2241 Filed April 18, 1950. Harry M. Hull, Clerk.

Affidavit of Swiss Law in Support of Plaintiff's Motion to Modify Order of July 5, 1949, and in Opposition to Defendants' Motion for an Amendment of Said Order.

DISTRICT OF COLUMBIA, ss:

Rene de Graffenried, being first duly sworn, on oath deposes and states:

That he is a citizen of Switzerland, a member of the Bar of the Canton of Berne, Switzerland, and thus admitted to the practice of law in all Cantons of the Confederation of Switzerland.

That he passed his examination for admission to the Bar in Berne in 1945; that he studied law at the Law Faculty of the University of Berne; that, while at Berne Law Faculty, he worked from 1943 to 1945 with two law firms in Berne, with the Cantonal District Court for the District of Seftigen, Canton of Berne, and the Cantonal Supreme Court of the Canton of Berne; that he practiced law as an associate attorney in a law firm in Geneva, Switzerland, from 1946 to 1947; that in 1947 and again in 1948 he prepared a thesis at Berne Law Faculty in order to obtain the Degree of Doctor of Law which he was

2242 awarded from the same Law Faculty in 1948; that since 1949 he works with the law firm of Messrs. Whiteford, Hart, Carmody and Wilson in Washington, D. C.

That he is familiar with all provisions of the Swiss Civil Code,—hereinafter S. C. C.—the Swiss Code of Obligations —hereinafter S. C. O.—the Swiss Penal Code—hereinafter S. P. C.—and the Federal Act of Banks and Savings-Banks relative to the protection of the personality, to the obligation of secrecy, and to economic information service and with all other provisions thereon; that he is acquainted with the court decisions based on the aforesaid provisions, and that he is duly qualified to testify as to the legislative acts and the law of the Swiss Confederation on these matters.

That he has examined:

(a) Chief Judge Laws' order of July 5, 1949 providing, amongst other things for the plaintiff to produce for inspection in Switzerland books, papers and documents of H. Sturzenegger & Co.

(b) Defendant's motion for an amendment to the order of July 5, 1949 so as to provide that plaintiff produce the documents of H. Sturzenegger et Cie. in the District of Columbia and not in Basle, Switzerland.

(c) Plaintiff's motion to modify Chief Judge Laws' order of July 5, 1949 by eliminating therefrom any requirement that the plaintiff produce the records of H. Sturzenegger & Cie., and any lists in connection therewith.

(d) Partnership contract of the firm of H. Sturzenegger & Cie., dated Basle, March 28, 1941.

That the Swiss Penal Code of December 21, 1937 contains the following provision:

Second Book
13th Title

Crimes and offenses against the state and national defense

2. Prohibited information service

Article 273. Economic Information Service.

Whosoever explores a manufacturing or business secret in order to make it available to a foreign official agency or to a foreign organization or to a private enterprise or to their agents.

Whosoever makes available a manufacturing or business secret to a foreign official agency or to a foreign organization or to a private enterprise or to their agents,

is punished by imprisonment, in serious cases by penitentiary. With the penalty affecting the personal liberty a fine can be combined.

2243 That this provision covers a situation as would exist if Dr. Hans Sturzenegger should produce for inspection in Switzerland or in the United States books, papers and documents of the banking firm H. Sturzenegger & Cie., to U. S. authorities, the facts and all information contained in said records and relative to the business of H. Sturzenegger & Cie., its relations to clients, authorities, bank correspondents or any third persons or firms being the object of a business secret in the meaning of this article, and the Office of Alien Property of the U. S. Department of Justice or its officers, attorneys and clerks, as well as the U. S. District Court for the District of Columbia, or its judges and clerks being official agencies, respectively their agents. *Thormann & von Overbeck, Commentary to the Swiss Penal Code, Note 5 to art. 273:*

Hafter, Treatise on the Swiss Penal Code, Special Part, Second Half, p. 673.

That, before art. 273 was put in force on January 1, 1942, art. 4 of the Federal Resolution concerning the preservation of the security of the Confederation, of June 21, 1935 *(Official Publication of the Federal Acts, Volume 51, p. 482 ff)* governed the same subject matter, the court decisions relative to said art. 4 therefore being considered to apply also to the interpretation of S. P. C., art. 273; D. F. S. C. 74/1948 IV 102 ff; 74/1948 IV 206.

That art. 273 is given an extensive interpretation; that even indications and references as to how an economic secret may be obtained are sufficient to constitute a crime; *Hafter p. 673, op. cit.*; that the Federal Supreme Court considers as business secret all facts of economic life for which there exists an interest worthy of protection that they should be kept secret; *Decisions of the Federal Supreme Court; Official Publication* —hereinafter D. F. S. C.— *65/1939 I 49 ff; 65/1939 I 333 ff; 74/1948 IV 103; 74/1948 IV 211; Rechtsprechung in Strafsachen 1948, No. 98, p. 50* reproducing a decision of the Supreme Court of the Canton of Basle-Stadt, of October 24, 1946; that such an interest is readily assumed so that, for instance, the salary relations of an enterprise *(D. F. S. C. 65/1939 I 47 ff)*, the fact that a person carried money across the Swiss-German Border in violation of the German

2244 foreign currency regulations *(D. F. S. C. 65/1939 I 330 ff)* or the fact that someone bought gold watches in Switzerland and smuggled them to France *(D. F. S. C. 74/1948 IV 102 ff)* are considered to be business secrets worthy of protection; that even false information is covered by art. 273, because the mere fact of disclosing information that concerns a business secret shall be prevented; *D. F. S. C. 65/1939 I 334; 71/1941 IV 218; Bruegger v. Public Prosecutor of the Canton of Basle-Stadt; 74/1948 IV 102 ff, Public Prosecutor of the Canton of Basle-Stadt v. Pencherek.*

That art. 273 has the purpose to protect, apart from the interests of the owner of a business, all persons who are interested that foreign authorities or organizations should not obtain knowledge of a certain economic fact, such as is the case for the client of a bank or of a law firm, purchasers of goods, employees or workers who are in business relations with a firm; that, in addition, by prohibiting the passing of any information on facts that under Swiss law have to be kept secret to a foreign country, art. 273 has the purpose to fight economic espionage as such and to protect Switzerland's economic security against foreign countries; *D. F. S. C. 65/1939 I 49, Public Prosecutor of the Canton of Thurgau v. Daendliker; Rechtsprechung in Strafsachen 1948, No. 98, p. 50, decision of the Cantonal Supreme Court of the Canton of Basle-Stadt; Public Prosecutor of the Canton of Zuerich v. Keller, October 28, 1949, unpublished decision of the Cantonal Supreme Court of the Canton of Zuerich:* that it is immaterial whether or not in a concrete situation public or private interests have in fact been affected and whether or not interested persons have given their consent to the disclosing of secrets, the mere passing of information calling for the application of art. 273; *D. F. S. C. 74/1948 IV 210 ff.*

That Swiss legal doctrine, which in Swiss law is a source of law for the deciding judge, approves unanimously the interpretation which art. 273 is is given by the Federal Supreme Court; *Hafter p. 673, Note 3, op. cit.; Thormann & von Overbeck, Note 3 to art. 273 and Note 1 to art. 162; Waiblinger, Zeitschrift des Bernischen Juristenvereins 83/1947 p. 385.*

2245 Furthermore, that the Swiss Act on Banks and Savings-Banks of November 8, 1934 contains the following provision:

Section No. 14

Provisions on Responsibility and Penalties

Article 47.
Whosoever intentionally

a) as revisor or assistant revisor flagrantly violates duties incumbent upon him in carrying through a revision or in composing or rendering a revision report, omits the prescribed summons to the revised bank to carry out adequate measures or does not render the prescribed reports to the Banking Commission (Articles 19 and 21),

b) as organ, officer, employee of a bank, as revisor or assistant revisor as member of the Banking Commission or as employee of its secretariat violates the duty to secrecy or the professional secret, whosoever incites thereto or makes an attempt to incite, is punished by a fine not exceeding 20,000 Francs or by imprisonment not exceeding six months. The two penalties can be combined.

If the committer acts negligently, the penalty consists of a fine not exceeding 10,000 Francs.

That the bank house of H. Sturzenegger & Cie comes within the purview of the Swiss Act on Banks and Savings-Banks and that it is a bank in the meaning of art. 1, paragraph 1, of said act which reads as follows:

"Subject to this act are all banks, private bankers (singly owned firms, partnership firms and limited partnerships) and savings-banks as well as those bank-like finance organizations which recommend themselves publicly for the acceptance of money that is not their own. All these enterprises are called banks in the following."

That Dr. Hans Sturzenegger as managing partner with unlimited liability of H. Sturzenegger & Cie is an organ and officer of his bank within the meaning of art. 47, sub-section (b); that the situation as would be created if Dr. Hans Sturzenegger produced the records of his firm to the U. S. Department of Justice and the U. S. District Court for the District of Columbia is covered by art. 47, sub-section (b).

That in Swiss law there exists a general obligation to

business secrecy which, like the professional secret of doctors, lawyers and clergymen, is put under penal protection; S. P. C. art. 162 and 321; that, thereby
2246 emphasizing the importance and significance which is attributed to the banking secret, art. 47, sets up the penal sanctions for violation of the banking secret by a banker; that the banking secret is defined as the obligation of the banks towards their clients not to give any information as to their position and to keep secret the facts entrusted to them on the basis of their business relations; that the banking secret results from the special position of confidence on which banking business is built up and from a strict requirement for banking activity in private industry.

That the banking secret exists and is binding for all bankers regardless of whether or not it was stipulated expressly, since keeping secret the property relations and other affairs of a client is the first requirement for the faithful and careful carrying out of the obligations undertaken in the mandate contract (S. C. O., art. 398, paragraph 2), the rules of which apply to the majority of all banker-client relations; that the banking secret is a well established business custom in Switzerland so that it must be considered to be tacit content of all and any contracts in banking business; *Decision of the Federal Supreme Court of December 16, 1930; Steffen* v. *Wolfensberger, not published in D. F. S. C. but in Neue Zuercher Zeitung of January 8, 1931;* that still another legal basis for the banking secret lies in S. C. C., art. 28, which reads as follows:

"The Law of Personality—B. Protection of the Personality—

I. In General—2. Complaint for injury.

Article 28.—He who is unauthorized injured in his personal relations can sue for relief from the trouble. A complaint for damages or the penalty of a sum of money as satisfaction is allowed only in those cases provided by law."

Steffen v. Wolfensberger, supra; unpublished decision of the Federal Supreme Court of February 2, 1932, Charpiot v. Caisse d'Epargne de Bassecourt S. A.; expert opinion of the Office for Public Prosecution and the Federal Department of Justice and Police, of May 8, June 21, 1935, published in Verwaltungsentscheide der Bundesbehoerden 1936, Volume 10, p. 151, and in Zeitschrift fuer Beurkundungs-und Grundbuchrecht, Volume 21, page 198.

2247 That, apart from penal sanctions, Dr. Hans Sturzenegger would risk to be sued for damages by clients or other hurt persons to whom the disclosure of certain facts has caused damage; that such claims would be based on S. C. O., art. 97 ff (effect of non-performance of a contract), art. 41 ff (obligations resulting from tort), 49 (violation of individual rights) and S. C. C., art. 28 (complaint of injury of personality).

That therefore, by producing the books, papers and documents of the firm H. Sturzenegger & Cie to U. S. authorities, Dr. Hans Sturzenegger would be confronted by both the S. P. C., art. 273, and the Federal Act on Banks and Savings Banks, art. 47, the latter penalizing violation of the banking secret by a fine not exceeding 20,000 Francs or by imprisonment not exceeding six months, whereby the two penalties can be combined, the former penalizing commission of economic information service by imprisonment, in serious cases by penitentiary, with the possibility to combine a fine with either of them.

/s/ René de Graffenried.

[Sworn to April 18, 1950.]

* * *

2248 Filed April 21, 1950. Harry M. Hull, Clerk.

Order Denying Motions of Plaintiff and Defendants to Amend the Order of July 5, 1949 With Respect to the Papers of H. Sturzenegger et Cie.

Upon consideration of the motion of the defendants to amend the order of July 5, 1949 so as to provide that plain-

tiff produce the documents of H. Sturzenegger et Cie. in the District of Columbia and not in Basle, Switzerland, and upon consideration of the motion of the plaintiff to modify the order of July 5, 1949 so as to excuse the plaintiff from producing the papers of H. Sturzenegger et Cie., and after hearing the parties and on the papers filed by the parties, it is:

ORDERED, that said motions are denied.

Dated: April 21, 1950.

/s/ BOLITHA J. LAWS,
Chief Judge.

2253 Filed June 22, 1950. Harry M. Hull, Clerk.

Defendants' Motion for an Order Requiring Plaintiff to Produce the Papers of H. Sturzenegger & Cie. in the United States and Not in Basle, Switzerland, etc.

Defendants by their undersigned attorneys respectfully move the Court for an order amending the order of July 5, 1949 herein to provide that plaintiffs produce the designated papers of H. Sturzenegger & Cie. in the United States and not in Basle, Switzerland, or for an order that on pain of sanctions imposed in the Court's discretion plaintiff comply with the said order of July 5, 1949, or for such other and further relief as the Court deems just and equitable in the premises.

The grounds for this motion are that plaintiff will not comply with the said order in Switzerland by reason of the fact that plaintiff's government has seized the designated papers of H. Sturzenegger & Cie., acting under laws which this Court has already rejected as an excuse for non-production. The seizure was no doubt procured by the plaintiff or could be undone by the plaintiff. Plaintiff has hitherto in this case demonstrated its ability to prevail upon the Swiss Government to waive or enforce its constitution and laws as the convenience of plaintiff required.

2254 There is attached and made part hereof a copy of the decree of the Swiss Government, received from the American Minister to Switzerland.

This motion is being made before the Court and not before the Master because it seeks relief appropriate for decision by the Court and because plaintiff's attorney has stated that he would not attend a hearing before the Master with respect to the seizure of the Sturzenegger records by the Swiss Government.

[Signed by counsel for defendants.]

June 22, 1950.

2255 **Attachment to Motion.**

COPY

Quotation of decree: "The Attorney General of Switzerland having taken cognizance of the order of the US District Court for the District of Columbia with regard to the case of the Bank H. Sturzenegger and Company, Basel, St. Jakobstrasse, 46, directing that the files of the Bank H. Sturzenegger and Company be submitted in the suit of "Internationale Industrie- und Handelsbeteiligungen A. G., Basel" versus the Attorney General of the US in Washington considering that the submission of these documents to the court would constitute an act of economic information prohibited by Article 273 of the Swiss Penal Code and a violation of bank secrecy (Article 47 of the Federal Law of November 1934 concerning banks savings institutions; A. S. 51, 134), infringements which the Federal authorities in the exercise of their police power have the duty to prevent in the interest of the maintenance of public security and order, decrees. 1) All the files and books of the bank H. Sturzenegger and Company, Basel, which are the subject of the order of the American Court are hereby seized. 2) The bank H. Sturzenegger and Company is placed under the prohibition until further notice to transmit any files or books or copies thereof to third

persons or to allow third persons to examine them. 3) The Federal Police is charged with the execution of this decree. The Federal Attorney General, signed Luthi. Berne, June 15, 1950."

2256 Filed June 22, 1950. Harry M. Hull, Clerk.

Motion of Plaintiff to Be Relieved From That Portion of Order of July 5, 1949, Requiring It to Produce Records of H. Sturzenegger & Cie. for Inspection by the Defendants.

Comes now the plaintiff, by its undersigned attorneys, and moves the Court to be relieved from that portion of the order of July 5, 1949, requiring it to produce the records of H. Sturzenegger & Cie. for inspection by the defendants.

Sturzenegger & Cie. have been prohibited by order of the Swiss Federal Attorney from delivering its records for this inspection. The undersigned attorneys were informed of this by the attached cable received June 21, 1950. Photostat and translation of the Swiss Federal Attorney's Order will be submitted to the Court when received.

The undersigned understand that the United States Government has been informed of this action through diplomatic channels.

[Signed by counsel for plaintiff.]

* * *

2257

R. C. A.

RADIOGRAM

RCA COMMUNICATIONS, INC.

RECEIVED AT 1112 Connecticut Ave., Washington 6, D. C. at 1950 Jun 21 P. M.

YWC362SDZ508 BASEL 312/311 21 1835 2:49 Standard Time.

Via RCA

WHITEHART WASHINGTON D C

ARE INFORMED BY STURZZENEGGER THAT TODAY JUNE TWENTY FIRST NOON AN AGENT OF THE SWISS FEDERAL ATTORNEY HANDED HIM AN ORDER TO BE TRANSLATED AS FOLLOWS QUOTE OFFICE OF THE SWISS FEDERAL ATTORNEY STOP NO VO DASH

2257

ST STOP ORDER STOP IN THE MATTER OF THE BANKING FIRM H STURZENEGGER AND CO IN BASLE COMMA ST JAKOBSSTRASSE 46 COMMA WHICH HAS BECOME KNOWN TO THE OFFICE OF THE SWISS FEDERAL ATTORNEY COMMA CONCERNING THE ORDER OF THE UNITED STATES DISTRICT COURT OF COLUMBIA TO PRODUCE BUSINESS RECORDS OF THE BANKING FIRM H STURZENNEGER AND CO IN THE ACTION OF THE QUOTE INTERNATIONALE INDUSTRIE UND HANDELSBETEILIGUNGEN AG COMMA BASLE UNQUOTE AGAINST THE ATTORNEY GENERAL OF THE UNITED STATES IN WASHINGTON COMMA IN CONSIDERATION COMMA THAT THE PRODUCTION OF THESE RECORDS WOULD CONSTITUTE THE FACT OF PROHIBITED ECONOMIC ESPIONAGE PARENTHESIS ART 273 PENAL CODE CLOSE PARENTHESIS AND WOULD ALSO VIOLATE THE BANK SECRECY PARENTHESIS ART 47 OF THE FEDERAL LAW OF 8TH NOVEMBER 1934 REGARDING BANKS AND SAVINGS BANKS SEMICOLON OFFICIAL COLLECTION 51 COMMA 134 CLOSE PARENTHESIS COMMA WHICH OFFENCE THE FEDERAL AUTHORITIES HAVE TO PREVENT IN ORDER TO MAINTAIN THE PUBLIC SECURITY AND ORDER ON THE BASIS OF THEIR PREVENTIVE POLICE POWER COMMA IT IS ORDERED COLON ONE STOP ALL THE BUSINESS RECORDS OR BOOKS OF THE BANKING FIRM H STURZENNEGER AND CO IN BASLE ORDERED TO BE PRODUCED BY THE AMERICAN JUDGE ARE HEREWITH CONFISCATED STOP TWO STOP THE BANKING FIRM H STURZENEGGER AND CO WILL CONSEQUENTLY BE PROHIBITED COMMA UNTIL FURTHER NOTICE COMMA FROM DELIVERING ANY BUSINESS RECORDS OR BOOKS OR COPIES OF THESE TO THIRD PARTIES OR FROM PERMITTING THIRD PARTIES TO INSPECT THEIR BUSINESS RECORDS STOP THREE STOP THE FEDERAL POLICE IS ENTRUSTED WITH THE EXECUTION STOP BERNE COMMA 15TH JUNE 1950 STOP THE FEDERAL ATTORNEY COLON SIGNED LUTHI UNQUOTE PHOTOSTAT AND TRANSLATION AIRMAILED TODAY

INTERHANDEL

* * *

2264 Filed June 22, 1950. Harry M. Hull, Clerk.

Defendant's Motion for Relief Because of the Plaintiff's Non-Compliance With the Order of July 5, 1949, With Respect to the Production of the Papers of H. Sturzenegger & Cie.

The defendants by their undersigned attorneys respectfully move the Court for an order, because of the plaintiff's anticipatory breach of that portion of the order of July 5, 1949, with respect to the production of the papers of H. Sturzenegger & Cie., granting such relief as is deemed just and appropriate, including a ruling that all matters which defendants could possibly show by the Sturzenegger papers be taken as proven.

The grounds for this motion are that plaintiff will not comply with the said order in Switzerland by reason of the

fact that plaintiff's government has seized the designated papers of H. Sturzenegger & Cie., acting under laws which this court has already rejected as an excuse for non-production. The seizure was no doubt procured by the plaintiff or could be undone by the plaintiff. Plaintiff has hitherto in this case demonstrated its ability to prevail upon the Swiss Government to waive or enforce its constitution and laws as the convenience of plaintiff required.

2265 Because of the informal statement of plaintiff's attorney that he would not attend a hearing before the Master in relation to this matter, a motion is also being made before the Court,

[Signed by counsel for defendants.]

June 22, 1950.

2269 Filed October 31, 1950. Harry M. Hull, Clerk.

Motion for Dismissal of Complaint Under Rule 37(b) for the Failure of Plaintiff to Produce the Papers of H. Sturzenegger & Cie.

The defendants by their undersigned attorneys move the court

1) for an order under Rule 37(b)(2) dismissing the complaint because of the failure of the plaintiff to produce the papers of H. Sturzenegger & Cie., Basle, Switzerland, in compliance with the order of the court dated July 5, 1949, and

2) for such other or further relief as may be just and equitable.

Respectfully submitted,

[Signed by counsel for defendants.]

October 31, 1950.

2270 Affidavit in Support of Motion for Dismissal of Complaint Under Rule 37(b) for the Failure of Plaintiff to Produce the Papers of H. Sturzenegger & Cie.

WASHINGTON,)
DISTRICT OF COLUMBIA,) ss:

David Schwartz, being duly sworn, deposes and says:

I am one of counsel for defendants in this case and I am familiar with the proceedings herein.

During July and August of this year, attorneys for defendants inspected and copied, in Switzerland, documents ordered to be produced by the plaintiff by the order of this Court dated July 5, 1949. The order of July 5, 1949 provided that plaintiff was to produce papers of I. G. Chemie and the papers of H. Sturzenegger & Cie. Plaintiff produced for inspection large quantities of its own documents, but it did not produce the papers of H. Sturzenegger & Cie. There are attached, as Exhibits A, B, and C, an exchange of correspondence between Mr. Walter Germann, manager of I. G. Chemie, and myself, confirming that plaintiff did not produce the Sturzenegger papers.

From the proceedings in June of this year the court is already aware that the Sturzenegger papers were on June 15, 1950, seized or sequestered by decree of an officer of the Swiss Government for the

2271 stated purpose of preventing enforcement of this Court's order of July 5, 1949. The Swiss laws which the decree seeks to enforce are the economic espionage law and the banking secrecy law, generally known as the Swiss secrecy laws. A copy of the decree in translation obtained from the Swiss Government is attached as Exhibit D. Mr. Germann's letter of July 20, 1950 (Exhibit B) shows that the decree was the excuse or reason for plaintiff's failure to produce the Sturzenegger papers.

In Switzerland I was informed by a member of the Swiss foreign office (Dr. Schnyder, mentioned below) that the decree of June 15, 1950 is not and will not be printed in any

source publicly accessible. He further told me that the "Bundesanwalt," the officer who signed the decree, is the head of a division in the Ministry of Justice in charge of the Swiss Federal Police and of the prosecution of federal crimes. The decree itself describes this officer as the Attorney General of Switzerland or the Federal Attorney General.

Early in July, prior to the beginning of inspection, I attended a meeting at the Swiss Federal Political Department, on request of the Swiss Government. I met with Dr. August Rebsamon, Chief of the Legal Section of the Federal Political Department, Dr. Fritz Schnyder of the Department, and Inspector Hartmann of the Swiss Federal Police. Dr. Rebsamon told me that the Swiss Government was making an unusual exception to its laws in permitting defendants' attorneys in this case to inspect the papers of I. G. Chemie, and that Dr. Schnyder and Inspector Hartmann would be present on the premises of I. G. Chemie during most of the period of inspection. Dr. Schnyder's assignment was to read the papers of I. G. Chemie and to waive the secrecy laws for them, document by document. I know that this was his assignment from discussions with him and from the progress of the inspection. At one time Dr. Schnyder told me that he was not waiving the secrecy laws for one document, a letter from the Swiss Army to I. G. Chemie. Frequently, when we had finished inspecting the documents given to us and asked for more, we
2272 were told both by I. G. Chemie and Dr. Schnyder that Dr. Schnyder had not yet cleared further documents. As his reading progressed, we received them for inspection.

Exhibits E, F, and G are copies of documents on file in this case and are attached hereto because they are discussed in the accompanying Points and Authorities.

/s/ DAVID SCHWARTZ.

[Sworn to October 31, 1950.]

2273

2273 **Exhibit A.**

COPY

C/O U. S. CONSULATE
BASLE, SWITZERLAND

July 17, 1950

Mr. Walter Germann
Director, I. G. Chemie
19 Peter Merian Strasse
Basle, Switzerland

Re: I. G. Chemie v. McGrath
9-21-1335

Dear Mr. Germann:

This will confirm our meeting on the morning of July 12, at which you stated that I. G. Chemie will not produce for inspection the documents of H. Sturzenegger & Cie. and the lists of some 2500 documents, referred to in paragraph 1, subdivisions (a) and (b), of the section of the order of the court dated July 5, 1949, beginning "IT IS FURTHER ORDERED, that the motion of defendants . . .".

Yours truly,

/s/ DAVID SCHWARTZ,
Special Assistant to the Attorney General.

2274 **Exhibit B.**

COPY

INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.
SOCIETE INTERNATIONALE POUR PARTICIPATIONS
INDUSTRIELLES ET COMMERCIALES S. A.

Telegramme: Interhandel
Telephon: 5 92 00

BASEL 2 (Postfach), den July 20, 1950
Peter Merianstr. 19

Giro-Konto: Schweiz. Nationalbank
Postscheck-Konto: V 11 682

Ge/Bu

Mr. David Schwartz
Special Assistant to the
Attorney General
c/o U. S. Consulate
Basle, Switzerland

Re: I. G. Chemie v. McGrath
9-21-1335

Dear Mr. Schwartz:

I beg to acknowledge receipt of your letter dated July 17, 1950, regarding our meeting of July 12, 1950. Your confirmation of my statement seems to me neither accurate nor complete. In order to give the Court the exact picture I wish to report herewith my recollection of our conversation on this point.

You brought up the subject.

MR. SCHWARTZ: "Will you produce the documents of H. Sturzenegger & Cie"?

MR. GERMANN: "Mr. Wilson has presented this matter to Judge Laws; the status of the matter remains unchanged; I have no further comment to make."

MR. SCHWARTZ: "Then I assume that you will not produce the Sturzenegger records"?

MR. GERMANN: "We will not be able to produce them."

MR. SCHWARTZ: "You will not be able and you will not produce them"?

MR. GERMANN: "I think so."

I do not remember that in this line of conversation you mentioned the "list of some 2500 documents". You asked me about this later and I told you that we do not have such list.

Yours truly,

/s/ GERMANN
Manager
Societe Internationale pour Participations Industrielles et Commerciales S. A.

2275 **Exhibit C.**

COPY

C/O U. S. CONSULATE
BASLE, SWITZERLAND

Basle, July 24, 1950.

Mr. Walter Germann
Managing Director of I. G. Chemie
Peter Merian Str. 19
Basle.

Dear Mr. Germann:

I am somewhat surprised at your letter of July 20. I had explained to you that my letter of July 17th was designed to record the bare facts and that I did not wish to phrase your reasons for not producing documents, preferring to leave that to you. At the time you seemed agreeable. I am sorry that you have since thought differently. I take your letter, nevertheless, as agreement to what we both know, namely, that you have not produced the Sturze-

negger papers or the list of 2500 documents, both referred to in the court order.

Since you apparently did not give me your full recollection of our discussion at our meeting of July 12 regarding the list of 2500 documents, I should like to give you mine. I asked about the list and you said that it had been returned to Dr. Ott or the S. C. O. In response to my further question as to whether you had asked for it so that it could be inspected, you responded that you had asked Dr. Ott to return it but that he had declined. For your information I enclose copies of letters about the lists I have written to Dr. Ott and to Dr. Schnyder of the Federal Political Department.

Yours truly,

/s/ DAVID SCHWARTZ.
Special Assistant to the Attorney General.

Encls.

2276

Exhibit D.

COPY

"The Attorney General of Switzerland having taken cognizance of the order of the US District Court for the District of Columbia with regard to the case of the Bank H. Sturzenegger and Company, Basel, St. Jakobstrasse, 46, directing that the files of the Bank H. Sturzenegger and Company be submitted in the suit of "Internationale Industrie- und Handelsbeteiligungen A. G., Basel" versus the Attorney General of the US in Washington considering that the submission of these documents to the court would constitute an act of economic information prohibited by Article 273 of the Swiss Penal Code and a violation of bank secrecy (Article 47 of the Federal Law of November 1934 concerning banks savings institutions; A. S. 51, 134), infringements which the Federal authorities in the exercise of their police power have the duty to prevent in the interest of the maintenance of public security and order, decrees. 1) All the files and books of the bank H. Sturzenegger and Company, Basel, which are the

subject of the order of the American Court are hereby seized. 2) The bank H. Sturzenegger and Company is placed under the prohibition until further notice to transmit any files or books or copies thereof to third persons or to allow third persons to examine them. 3) The Federal Police is charged with the execution of this decree.

The Federal Attorney General, signed Luthi. Berne, June 15, 1950."

2277 **Exhibit E.**

COPY

(Enclosure to Despatch No. 15069 dated April 23, 1947 from American Legation at Bern, Switzerland.)

TRANSLATION

FEDERAL POLITICAL DEPARTMENT,
Division of Foreign Affairs,
rB. 65.5.21 Am.—WE/ON.

With reference to the Legation's note No. 2583 of November 5, 1946, the Political Department's reply of November 28, 1946, regarding the taking of testimony by American Consulates, the Federal Political Department has the honor to acknowledge receipt of a new note, No. 2697 of March 28, 1947, from the Legation of the United States of America.

After examining with the competent Federal authorities the request contained in the Legation's note of November 5, 1946, the Political Department regrets to inform the Legation that it is not possible to take favorable action on this request.

In effect, the taking of testimony, according to the Swiss conception, is a judicial prerogative of Federal and Cantonal sovereignty to which no exceptions can be made. This prerogative thus remains exclusively within the competence of Swiss tribunals authorized to take depositions as requested through diplomatic channels.

The Political Department wishes to refer to its note of September 4, 1922, to the Legation and that of the Federal Department of Justice and Police of November 25, 1938, in which the Swiss point of view was set forth and which remains unchanged.

The Federal Political Department avails itself of this opportunity to renew to the Legation of the United States of America the assurance of its high consideration.

NR-M/lj

2278 **Exhibit F.**

COPY

(Enclosure No. 1 to despatch No. 1544, September 16, 1947, from American Legation, Bern, Switzerland.)

RESTRICTED

TRANSLATION

FEDERAL POLITICAL DEPARTMENT,
B. 65.5.21. Am.—RE.
ad No. 2834.

By note of August 29, 1947, the Legation of the United States of America returned to the question of the taking of testimony by American Consulates in Switzerland and proposed to engage in direct negotiations on this subject.

The Federal Political Department has the honor to inform the Legation that the federal authorities, after having once more carefully examined the problem, find themselves obliged to maintain the point of view which they have already set forth on several occasions. In effect, the taking of testimony, according to the Swiss conception, constitutes an act of sovereignty reserved exclusively to the courts. The latter proceed in such matters on the basis of letters rogatory addressed through diplomatic channels.

Moreover, the Swiss authorities, in giving to American Consulates in Switzerland the right to proceed with inter-

rogations, would create a regrettable precedent of which other countries would not fail to avail themselves also.

In these circumstances the Department believes that the conversations envisaged by the American authorities would have little chance of success. It seems then that it would be useless to have an American expert come especially for this purpose.

The Department hopes that the American authorities will be willing to show a comprehending attitude with respect to the position of the Swiss authorities in this matter and it takes this occasion to renew to the Legation of the United States of America the assurance of its high consideration.

RESTRICTED

2279 **Exhibit G.**

COPY

LEGATION OF SWITZERLAND
WASHINGTON, D. C.

November 29, 1948.

Mr. David L. Bazelon,
Assistant Attorney General,
Director, Office of Alien Property,
Department of Justice,
Washington, D. C.

Dear Mr. Bazelon:

Reference is made to the conversation of November 24, 1948, which Mr. Mason, Mr. David Schwartz and three other members of your office had with Mr. de Rham of this Legation, with respect to the case of Societe Internationale pour Participations Industrielles et Commerciales S. A. (Interhandel), formerly known as I. G. Chemie, Basle.

I wish to confirm to you that the Swiss Government is willing, as an exception, that for this case depositions be taken in Switzerland and documents examined there, in ac-

cordance with the American law. I should like to point out that persons called upon to testify will be free to answer the questions put to them and will not in so doing violate any Swiss law.

It is the intention of the Federal Political Department to delegate a representative to attend the hearings with merely the functions of an observer. There would be no objection on the part of the same authorities to the presence also of a representative of the American Legation in Berne.

Very truly yours,

For the Minister of Switzerland:

/signed/ ERIC KESSLER,
Counselor of Legation.

2280 Filed October 31, 1950. Harry M. Hull, Clerk.

Points and Authorities in Support of Defendants' Motion to Dismiss.

* * * * *

2286 B. *The decree is entitled to no weight because it seeks to enforce secrecy laws which have been waived by the Swiss Government.*

The enforcement of the Swiss secrecy laws by the decree of June 15, 1950 must be considered in the light of the fact that these same laws were at the outset of this case explicitly waived by the Swiss Government. The occasion of this waiver and the speed with which it was procured are in themselves significant.

2287 In October 1948 plaintiff moved, on jurisdictional grounds, to strik defendants' notice to take the deposition of Hans Sturzenegger in Washington. The plaintiff contended in the alternative that if the deposition were to take place, it should take place in Switzerland and not in Washington.

On the question of the place of the deposition, defendants showed by diplomatic correspondence that since 1922 the Swiss Government has taken the position that it is unconstitutional to take a deposition in Switzerland, because of the exclusive power of the Swiss courts over judicial matters. In a note to the American Legation in Bern, dated April 23, 1947 (Exhibit E to accompanying affidavit), the Swiss Government said:

> After examining with the competent Federal authorities the request contained in the Legation's note of November 5, 1946, the Political Department regrets to inform the Legation that it is not possible to take favorable action on this request.
>
> In effect, the taking of testimony, according to the Swiss conception, is a judicial prerogative of Federal and Cantonal sovereignty to which no exceptions can be made. This prerogative thus remains exclusively within the competence of Swiss tribunals authorized to take depositions as requested through diplomatic channels.

The note continued, stating that this position had been explained to the Legation in 1922, again in 1938, and remained unchanged. The Legation nevertheless asked for reconsideration of its request that depositions be permitted, but the Swiss Government reiterated its position:

> In effect, the taking of testimony, according to the Swiss conception, constitutes an act of sovereignty reserved exclusively to the courts. The latter proceed in such matters on the basis of letters rogatory addressed through diplomatic channels. (Note from the Swiss Government dated September 16, 1947, Exhibit F to accompanying affidavit.)

Nine days after these notes from the Swiss Government were filed with the court, a representative of the Swiss Minister in Washington called upon defendants' attorneys to invite them to take depositions in Switzerland in this case, as an exception to the general

2288 rule. This oral invitation was shortly followed by a written invitation from the Swiss Minister:

> I wish to confirm to you that the Swiss Government is willing, as an exception, that for this case depositions be taken in Switzerland and documents examined there, in accordance with the American law. I should like to point out that persons called upon to testify will be free to answer the questions put to them and will not in so doing violate any Swiss law. (Letter, Eric Kessler, Counselor of Legation, for the Swiss Minister, to the Director, Office of Alien Property, November 29, 1948, Exhibit G to accompanying affidavit.)

The Swiss permission that "for this case depositions be taken in Switzerland and documents examined there, in accordance with the American law," waived two sets of laws. The permission to take depositions waived the Swiss constitutional law against encroachment on the powers of the judiciary which the Swiss Government had for twenty-five years said prevented the taking of depositions in Switzerland. The permission to examine documents and to have witnesses answer questions waived the Swiss secrecy laws and any other laws which might have prevented the examination of Swiss documents or witnesses.

These waivers had obviously been procured by plaintiff. At the hearing, plaintiff's counsel admitted this, saying that when defendants had pointed out that it was illegal to take the depositions in Switzerland "your humble servant got busy" and the result was the letter from the Swiss Minister. (Tr. of Hearing, December 3, 1948, pp. 43-44.)

Thus, it appears that at the outset of this case the Swiss Government waived its constitution and its secrecy laws for this case, merely on the request of the plaintiff. Now its prosecutor enforces those secrecy laws for the Sturzenegger papers. The waiver of the secrecy laws was admittedly procured by plaintiff. It is unreasonable to conclude that plaintiff procured the present enforcement. Or that if plaintiff in nine days could procure a waiver of the

Swiss constitution and the Swiss secrecy laws, it could, if it desired, procure a lifting of the decree enforcing those laws. We venture to suggest that

2289 if this Court orders that the complaint be dismissed unless the Sturzenegger papers are produced, the Swiss Government will again waive the Swiss secrecy laws as it has done before. In any event, the formal, unqualified waiver of the Swiss secrecy laws must deprive the decree of June 1950, which enforced those laws, of any weight in this Court. Even governments may not blow hot and cold, especially in the private interest of a private litigant.

C. The decree is entitled to no weight because it is no more than an attempt to force this Court to reverse its two prior orders holding the Swiss secrecy laws ineffective to prevent discovery.

The decree of the Swiss prosecutor states in so many words that its purpose is to prevent enforcement of this Court's order of July 5, 1949 and to require enforcement of Article 273 of the Swiss Penal Code, the economic espionage law, and Article 47 of the Swiss Banking Law, the banking secrecy law. Twice before this decree was issued, however, plaintiff raised these same Swiss secrecy laws as excuses for the obligation to make discovery and as a ground for amending the order of July 5, 1949 so as to eliminate the requirement that the Sturzenegger papers be produced. In both instances the Swiss secrecy laws were rejected, and the court refused to vary the order of July 5, 1949. The Swiss decree in one fell swoop, therefore, seeks to frustrate the order of July 5, 1949 and to reinstate in force in this case the two Swiss secrecy laws which have been twice ruled to be ineffective to prevent discovery.

The first effort of the plaintiff to give force to the Swiss secrecy laws was in the proceeding before Judge Bailey arising from Mr. Sturzenegger's refusal to answer ques-

tions at the resumption of his deposition on January 9, 1950. Plaintiff's counsel argued that were Mr. Sturzenegger to answer the questions he would be subjected in Switzerland both to criminal liability under the economic espionage law and to civil liability under the banking secrecy law. (Transcript of hearing, January 9, 1950.)

Judge Bailey overruled the contention

2290 from the bench, saying

> I have already passed upon the question as to whether these questions were relevant or not, and I am satisfied that they were.
>
> On the other question, the objection you raise now, I think matters of this kind, questions of evidence and questions of privilege, are governed by the forum; and, in addition to that, I think that that decision of the Supreme Court to which you referred—I do not recall the exact title of it; somebody against the Kingdom of the Two Sicilies—controls this case.
>
> Now, I assume, for the purpose of this motion, that you have correctly stated the Swiss law; but whatever that law may be, even though it may subject the witness to a penalty or to criminal prosecution, I do not think this Court will permit a foreign law to obstruct it in ascertaining the facts in a case at issue before it; and I overrule your application, treating it as permissible even under my own ruling. In other words, I am not basing this upon the fact that I have already decided this case, because this particular matter I did not decide; but I do decide it now as I have indicated. (Tr. Jan. 9, 1950, pp. 9-10.)

Judge Bailey ordered that the questions be answered. The order, dated January 10, 1950, states: "The ground for this order is . . . that foreign law or foreign privilege is not a valid excuse for a refusal to answer questions."[4]

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[4] Judge Bailey's ruling stemmed from the general principle that recognition of a claim to privilege is governed by the law of the forum. Privileges not recognized in the forum may not be invoked.

Doll v. *Equitable Life Assurance Soc.*, 138 Fed. 705, 710 (C. A. 3, 1905);

~~2291~~

2291 The second attempt of the plaintiff to impose the Swiss secrecy laws upon this Court took place in January of this year when plaintiff moved to amend the order of July 5, 1949 so as to omit the requirement that it produce the Sturzenegger papers. Plaintiff's motion again relied upon the economic espionage law and the banking secrecy law, and plaintiff submitted a lengthy affidavit by a Swiss lawyer arguing that production of the Sturzenegger books would subject Mr. Sturzenegger to liability under both these laws. The affidavit concluded as follows:

> That therefore, by producing the books, papers and documents of the firm H. Sturzenegger & Cie to U. S. authorities, Dr. Hans Sturzenegger would be confronted by both the S. P. C., art. 273, and the Federal Act on Banks and Savings Banks, art. 47, the latter penalizing violation of the banking secret by a fine not exceeding 20,000 francs or by imprisonment not exceeding six months, whereby the two penalties can be combined, the former penalizing commission of economic information service by imprisonment, in serious cases by penitentiary, with the possibility to combine a fine with either of them. (Affidavit of Rene de Graffenried, sworn to April 18, 1950.).

Despite argument by plaintiff's counsel that Mr. Sturzenegger faced jail and lawsuits if he were to produce

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Munzer v. *Swedish American Line*, 35 F. Supp. 493, 496 (D. C. S. D. N. Y., 1940);

First Trust Co. of St. Paul v. *Kansas City Life Ins. Co.*, 79 F. 2d 48, 52 (C. C. A. 8, 1935);

Van Wie v. *United States*, 77 F. Supp. 22, 44 (D. C. N. D. Ia., 1948).

See specifically with respect to discovery proceedings, Dyer-Smith, *Federal Examination Before Trial* (1939), pp. 44, 45.

Illustrative of the general principle, and of special relevance here, is the well settled rule that documents and answers may not be withheld under the privilege against self-incrimination on the ground that the information would disclose a crime under the laws of another jurisdiction.

United States v. *Murdock*, 284 U. S. 141, 149; citing with approval *King of the Two Sicilies* v. *Willcox*, 7 State Trials (N. S.) 1050, 1068;

United States v. *St. Pierre*, 128 F. 2d 979, 980 (C. A. 2, 1942).

See also the cases cited above, in point 3.

his papers, the contention was rejected and plaintiff's motion was denied.

One would think that these two rulings would have ended the matter. Apparently, however, plaintiff and its government are intent on suppressing the Sturzenegger papers,[5] and the decree of June 15 attempts by force to compel this Court to accept what it has twice rejected—the contention that the Sturzenegger papers are secret under Swiss law. There seems to defendants only one answer this Court should make—that the decree must also be rejected.

2292 D. *The decree is entitled to no weight because the Swiss Government has so associated itself with plaintiff for the purpose of litigation of plaintiff's claim, that responsibility for the decree must be imposed upon the plaintiff.*

The counts against the decree of June 15, 1950 are many. It enforces secrecy laws which have already been waived. It enforces secrecy laws which have been rejected by two orders of this Court. Its stated purpose is to frustrate the order for discovery made by this Court. It absolves plaintiff of the obligations of the order for discovery after plaintiff had been unsuccessful in repeated efforts to be relieved by this Court of the obligations of the order. It was issued only after plaintiff had taken the benefits of the order for discovery. In sum, it was issued in the interest of plaintiff and in an effort to hide from this Court the truth as to the enemy taint of I. G. Chemie.

The Swiss Government's conduct in this case shows that that government has chosen to cast its lot with the plaintiff

[5] While the Swiss Government has denied this Court access to the Sturzenegger papers, that government seized and studied both the Chemie and Sturzenegger papers when it made its own investigation of I. G. Chemie's enemy status. From the reports on this subject written by the Swiss Government (attached to an affidavit by David Schwartz dated January 18, 1949, on file), it abundantly appears that Chemie and Sturzenegger are so intimately related that an investigation of Chemie without the Sturzenegger papers would be hopelessly incomplete.

in this litigation, for better or worse. This partnership is so firm that the Swiss Government has waived its constitution, waived its secrecy laws, retracted its waiver, and now waived in part and enforced in part. When plaintiff was inconvenienced by a Swiss law, the Swiss Government changed that law, of a constitutional nature, and other laws. When that very change embarrassed the plaintiff during the next step in the case, the change was unchanged. The Swiss Government was glad to retract its waiver of Swiss law and to decree that plaintiff need not comply with this Court's order for discovery.

It seems clear that the Swiss Government and the plaintiff are in complete privity for the purpose of this case and that as a consequence personal responsibility for the decree of June 15, 1950 must be borne by the plaintiff.

2293 5. *Conclusion.*—The motion should be granted and the complaint dismissed, on the ground that the documents which have not been produced are of decisive importance in the case and that the failure to produce is not excusable, for the reasons that (1) as a matter of law a foreign plaintiff may not have the benefit of the process of this Court when its government disables it from making such discovery as is required from all plaintiffs, and (2) as a matter of fact the circumstances are such as to impose personal responsibility upon the plaintiff for the Swiss decree of June 15, 1950.

Respectfully submitted,

[Signed by counsel for defendants]

October 31, 1950.

* * * * *

2332-2338 [These pages of the record are identical with R. 2286-2293, *supra*.]

* * * * *

Filed November 28, 1950. Harry M. Hull, Clerk.

Motion for Reconsideration By Chief Judge Laws of Plaintiff's Motion of June 22, 1950 to Be Relieved From That Portion of Order of July 5, 1949, Requiring It to Produce Records of H. Sturzenegger & Cie. for Inspection By the Defendants.

Comes now the plaintiff, by its undersigned attorneys, and moves Chief Judge Laws to reconsider plaintiff's motion of June 22, 1950 (described in the above title), in the light of defendants' motion of October 31, 1950 for dismissal of complaint under Rule 37(b) for the failure of plaintiff to produce the papers of H. Sturzenegger & Cie., and of the opposition which plaintiff will make thereto.

[Signed by counsel for plaintiff]

* * *

2352 Filed December 29, 1950. Harry M. Hull, Clerk.

* * *

Order of Swiss Federal Attorney, Dated June 15, 1950, Attached to Plaintiff's Memorandum.

2380 *Translation.*

Office of the
Swiss Federal Attorney

No. Vö/st ORDER

In the matter of the banking firm H. Sturzenegger & Co. in Basle, St. Jakobsstrasse 46, which has become known to the Office of the Swiss Federal Attorney, concerning the order of the United States District Court of Columbia to produce business records of the banking firm H. Sturzenegger & Co. in the action of the "Internationale Industrie- und Handelsbeteiligungen A.-G., Basle", against the

~~2000~~

Attorney General of the United States in Washington,

in consideration,

that the production of these records would constitute the fact of prohibited economic espionage (Art. 273 penal code) and would also violate the bank secrecy (Art. 47 of the Federal Law of 8th November, 1934, regarding banks and savings banks; Official Collection 51, 134), which offence the Federal Authorities have to prevent in order to maintain the public security and order on the basis of their preventive police power,

it is ordered:

1. All the business records or books of the banking firm H. Sturzenegger & Co. in Basle ordered to be produced by the American judge are herewith confiscated.
2. The banking firm H. Sturzenegger & Co. will consequently be

2381 prohibited, until further notice, from delivering any business records or books or copies of these to third parties or from permitting third parties to inspect their business records.

3. The Federal Police is entrusted with the execution.

Berne, 15th June, 1950.

The Federal Attorney:
sig. Luthi.

2383 **Memorandum of Swiss Law, Attached to Plaintiff's Memorandum.**

THE CONTROL RIGHTS OF THE COMPENSATION OFFICE IN RESPECT OF GERMAN PROPERTIES IN SWITZERLAND.

By Decree of the Federal Council concerning the preliminary settlement of the payment traffic between Switzerland and Germany of 16th February, 1945 (official collec-

tion 61, P. 85 ff.) all German properties in Switzerland were blocked. Art. 9, clause 3 of this Decree reads:

"The Swiss Compensation Office is empowered to demand the information necessary for clarifying the facts from any person, insofar as it may be of importance for the execution of this Decree of the Federal Council. It can undertake the revision and control of books, particularly of such firms and persons which do not comply or do not sufficiently comply with the obligation to give information to it or against which there are grounds for suspicion that they have committed contraventions against the present Decree of the Federal Council."

Art. 10 of this Decree provides, inter alia:

"Whoever contravenes against the orders issued by the Department of Public Economy or in any way hinders or seeks to hinder in Switzerland the official measures taken for the execution of this Decree of the Federal Council, will be punished with a fine up to Frs. 10,000.—or imprisonment up to 12 months; the two penalties can be combined."

"Negligent conduct is also liable to penalty."

The Swiss Compensation Office was already authorized by this Decree to undertake revisions and controls and to demand information. Whoever did not comply with such demands rendered himself liable to penalty.

With Decree of the Federal Council concerning the amendment and supplementation of the Decree of the Federal Council concerning the preliminary settlement of the payment traffic between Switzerland and

2384 Germany of 27th April, 1945, (official collection 61, P. 267 ff.) Art. 9 of the first-mentioned Decree was amended. It now reads:

"The Swiss Compensation Office is entrusted with the execution of this Decree of the Federal Council and of eventual orders of the Federal Department of Public Economy. It is authorized to demand information necessary for the clarification of a fact from

any person, insofar as it can be of importance for the execution of this Decree of the Federal Council. It can undertake revisions and controls of books, particularly of such firms and persons who do not comply, or do not sufficiently comply with their obligation to give it information or against which there are grounds for suspicion that they have committed contraventions against this Decree of the Federal Council.

"In order to ensure the execution of this Decree of the Federal Council the Swiss Compensation Office can, in urgent cases, order the preliminary payment of an asset into the Swiss National Bank or its deposit with the Swiss National Bank or another agency to be designated by it. It can claim the cooperation of the police authorities. Moreover, in case of doubt it can, in the sense of a precautionary measure, subject payments and assets to the limitations of Arts. 1-3 of this Decree of the Federal Council."

Art. 10 was also redrafted on this occasion and the section of interest here reads:

"Whoever contravenes against the orders of the Federal Department of Public Economy or hinders or seeks to hinder the official measures taken for the execution of this Decree of the Federal Council by refusing information or by giving false or incomplete information or in any other way, will be punished with a fine up to Frs. 10,000.—or imprisonment up to 12 months. The two penalties can be combined. The general provisions of the Swiss Penal Code of 21st December, 1937, are applicable.

Negligent conduct is also liable to penalty."

With this the Swiss Compensation Office was not only authorized to execute the Decree but the cooperation of the police authorities was also placed at its disposal and in particular the refusal of information or the giving of false or incomplete information was made liable to penalty.

Through the Decree of the Federal Council concerning the Obligation to Register German Property in Switzerland of 29th May, 1945, official

2385 collection 61, P. 331 ff., the obligation to register German assets with the Swiss Compensation Office was laid down. Art. 2 of this Decree reads:

"Persons entitled to these assets, moreover all persons administering or holding such assets or who have custody or supervision of them are obliged to register."

"Insofar as a natural or juristic person, commercial company or association of persons mentioned in Art. 1 participates in juristic persons, commercial companies or associations of persons, the manager as well as other persons authorized for the representation or administration, as, for example, members of board of directors, administrators, members of the direction, partners, managers, manager of a registered office, members of an endowment board, etc. have an obligation to register these juristic persons, commercial companies or associations of persons.

The custodians of closed deposits and the tenants of safes are obliged to register the existence of a custodianship or tenancy, insofar as these take place in favour of one of the natural or juristic persons, commercial companies or associations of persons mentioned in Art. 1, or a natural or juristic person, commercial company or association of persons mentioned in Art. 1 is entitled to dispose of the closed deposit or safe."

Art. 4 of this Decree reads in clauses 2 and 3:

"The Swiss Compensation Office is entrusted with the execution of this Decree of the Federal Council and of eventual orders of the Federal Political Department. In particular it will determine what information and documentary evidence has to be presented by the persons under obligation to register in individual cases. The Swiss Compensation Office is authorized to demand information necessary for the clarification of a fact from any person, insofar as it can be of importance for the execution of this Decree of the Federal Council. It can undertake revisions and controls of books, particularly of such firms and persons who do not comply or do not sufficiently com-

ply with the obligation to give information to it, or against which there are grounds for suspicion that they have committed a contravention against the present Decree of the Federal Council."

Art. 5 reads:

"The Swiss Compensation Office can request the cooperation of the judicial and administrative authorities for the purpose of the execution of this Decree of the Federal Council."

2386 In Art. 6 it is provided:

"Whoever contravenes the orders issued by the Federal Political Department or hinders or attempts to hinder the official measures taken for the execution of this Decree of the Federal Council by refusing information or by giving false or incomplete information or in any other way, will be punished with a fine up to Frs. 10,000.—or with imprisonment up to 12 months; the two penalties can be combined.

The general provisions of the Swiss Penal Code of 21st December, 1937, are applicable. Negligent conduct is also liable to penalty."

Through these Decrees of the Federal Council the Swiss Compensation Office is authorized to undertake any control and revision and bank secrecy is also lifted. This results not only from the sense of the dispositions but also from the explicit mention of closed deposits, safes and their custody or renting, that is manifestly bank transactions and bank installations.

The only matter which still remains questionable is whether the special professional secrecy of lawyers, as protected by Art. 321 Penal Code, was also lifted. Opinions differ here. On 16th June, 1945, the board of the Swiss Association of Lawyers considered this problem. It finished by denying the lawyer's obligation to register, "because the persons mentioned in Art. 321 Penal Code are only released from the obligation of secrecy when Federal or cantonal provisions explicitly lift the obligation of secrecy of these persons. However, the board commis-

sioned the business committee to inform the Federal Council of this opinion and at the same time to propose that it should refrain from releasing the persons mentioned in Art. 321 from professional secrecy retrospectively as the preservation of professional secrecy is

2387 in the state's own interest and is one of the principles of a constitutional state which may not be pierced by every momentary interest of the state.'" (Schw. Juristenztg. 1945, P. 208).

The question "Lawyers' Secrecy and Obligation to Register German Assets" was also examined in detail by Dr. Sieben in the Schw. Juristenztg. (1945, P. 255 ff.). He also came to the conclusion that the professional secrecy of the lawyer takes precedence over the obligation to register. In a postscript to this treatise Prof. Oftinger (Schw. Juristenztg. 1945, P. 257) pointed out that this discussion would be superfluous if the legislator had explained himself more clearly.

Through Decree of the Federal Council concerning the obligation to give Information on the Basis of the Provisions concerning the Blocking and Registration of Foreign Assets in Switzerland of 7th September, 1945 (Official Collection 61, P. 709 ff.), it was established:

> "Art. 1.
>
> The obligation to give information or to register with the Swiss Compensation Office ordered in the Decrees of the Federal Council concerning the preliminary Settlement of the Payment Traffic in respect of various countries, in the Decree of the Federal Council of 13th July, 1945, concerning the Blocking of the Property of Deported Persons, and in the Decrees of the Federal Council concerning the Obligation to Register for Foreign Assets in Switzerland, takes precedence over the professional secrecy for lawyers, notaries etc. according to Art. 321 of the Swiss Penal Code of 21st December, 1937."

Thus the lawyers' secrecy was also lifted in due form in favour of the Swiss Compensation Office.

Finally another supplementation and clarification of the above-mentioned Decrees was undertaken through the Decree of the Federal Council of 30th November, 1945. The

Decree of the Federal Council concerning the

2388 preliminary Settlement of the Payment Traffic between Switzerland and Germany of 16th February, 1945, was supplemented as follows:

"Art. 9ter.:

The Swiss Compensation Office is authorized to demand the opening of safes and closed deposits, insofar as the safes are rented by a natural or juristic person, commercial company or association of persons subject to the provisions of this Decree of the Federal Council or such a person is entitled to dispose of them, or insofar as the closed deposits have been established in favour of such a person. The same holds for other safes and closed deposits if there are grounds for suspicion that assets are held in these in favour of a natural or juristic person, commercial company or association of persons subject to the provisions of this Decree of the Federal Council.

If the opening of a safe or of a closed deposit is not possible in any other way, the Swiss Compensation Office can order it to be forced open. The consent of the Federal Political Department is necessary for this if it takes place merely upon the suspicion that assets are held in the relevant safe or deposit in favour of a natural or juristic person, commercial company or association of persons subject to the provisions of this Decree of the Federal Council.

The Swiss Compensation Office will examine the contents of the safes and deposits, will take inventories of them and will secure them by placing them under seal or in another manner.

The opening of safes and closed deposits and the taking of an inventory of their contents should, as a rule, take place in the presence of the tenant, of a person entitled to dispose or of the lessor."

The Decree of the Federal Council concerning the Obligation to Register for German Assets in Switzerland of

29th May, 1945, was supplemented by the following Art. 4bis:

"The Swiss Compensation Office is authorized to demand the opening of safes and closed deposits, insofar as the safes are rented by a natural or juristic person, commercial company or association of persons mentioned in Art. 1, or such a person is entitled to dispose of them, or insofar as the closed deposits have been set up by such a person. The same holds for other safes and closed deposits if there are grounds for suspicion that assets are held in them in favour of a natural or
2389 juristic person, commercial company or association of persons mentioned in Art. 1. Where the opening of a safe or of a closed deposit is not possible in another manner, the Swiss Compensation Office can order it to be opened by force. The consent of the Federal Political Department is necessary for this if it takes place merely upon the suspicion that assets are held in the relevant safe or deposit in favour of a natural or juristic person, commercial company or association or persons mentioned in Article 1.

The Swiss Compensation Office will examine the contents of the safes and deposits, will make inventories of them, secure them by placing them under seal or in another way, and will have such assets found there which are subject to registration registered by the persons mentioned in Art. 3. The opening of safes and closed deposits and the taking of an inventory of their contents should, as a rule, take place in the presence of the tenant, of a person entitled to dispose or of the lessor."

With this too bank secrecy was clearly and explicitly pushed aside and the Compensation Office was granted every possibility of control.

The counterpart to the partial lifting of professional secrecy in favour of the Swiss Compensation Office is the absolute obligation to secrecy of the Compensation Office itself and of its organs and officials. The Swiss Compensation Office is a corporation under public law which was established by Decree of the Federal Council of 2nd Octo-

ber, 1934. For it and its officials the provisions of the Federal Act concerning the Conditions of Employment of Federal Officials of 30th June, 1927, are correspondingly applicable. Art. 27 of this reads as follows:

> "The official is obliged to keep silence in respect of official matters which, because of their nature or according to special provision, are to be kept secret. The Obligation to keep silence still stands even after dissolution of the employment."

The Service and Salary Order of the Swiss Compensation Office of 14th March, 1935, also provided in its Art. 14 for the obligation to keep silence. The present Service and Salary Order of 1st January, 1948, reads in Art. 13 as follows:

2390 "The employee has the obligation to keep silence in respect of official matters which, because of their nature or according to special provision, are to be kept secret. Strict secrecy is to be kept in respect of all facts, official matters or associations; personal circumstances or relations and other such which become known to the employee through his activity, which refer either to the Compensation Office or to the authorities, banks, forms and other persons in direct or indirect contact with it. In the same way communications concerning the contents of official records or the delivery of such to third parties without permission of the direction is prohibited. Records or copies of these may not be removed from the business premises of the Compensation Office without the permission of the direction.

Any infringement of secrecy will be dealt with summarily. The provisions of the Penal Code concerning infringement of official and professional secrecy (Art. 320/21) and also the civil law responsibility in respect of claims for damages are reserved.

The obligation to keep silence still stands in its full extent even after dissolution of the employment."

The quoted articles of the Swiss Penal Code read as follows:

"Art. 320, Infringement of official secrecy:

1. Whoever reveals a secret which has been confided to him in his capacity as member of an authority or as official, or which he has held in his official capacity, will be punished with imprisonment or with a fine.

The infringement of official secrecy is punishable even after termination of the official relationship.

2. The perpetrator is not liable to penalty if he has revealed the secret with written authority of his superior authorities."

"Art. 321, Infringement of professional secrecy:

1. Clergymen, lawyers, defending counsels, notaries, auditors obliged to maintain secrecy according to the Obligation Law, physicians, dentists, dispensing chemists, midwives, as well as their assistants, who reveal a secret which has been confided to them in consequence of their profession or which they have held in the exercise of this, will upon application, be punished with imprisonment or with a fine.

Students who reveal a secret which they observe in their studies will be punished in the same way. The infringement of professional secrecy is still liable to penalty even after termination of the exercise of the profession or of the studies.

2391 2. The perpetrator is not liable to penalty if he has revealed the secret on the basis of a permission from the beneficiary or of a written permission issued upon application of the perpetrator from the superior authorities or supervisory authorities.

3. The Federal and Cantonal provisions concerning the obligation of a witness and the obligation to give information to an authority are reserved."

Finally, I must also mention that in the revising of the by-laws of the Compensation Office at present under discussion, it is intended to mention the obligation to maintain secrecy in a special article in the by-laws too.

From all these statements it follows that the piercing of professional secrecy in favour of the Compensation Office represents a unique and extraordinary exception and that it does not simply affect the obligation to keep silence but only authorizes the control by the Compensation Office. On the other hand the Compensation Office, its organs and of-

ficials are in their turn obliged to the strict preservation of secrecy so that practically secrecy is maintained and again in the Compensation Office is protected legally by penal provisions.

2392 Filed January 12, 1951. Harry M. Hull, Clerk.

Supplemental Memorandum in Support of Motion for Dismissal of Complaint Under Rule 37(b) for the Failure of Plaintiff to Produce the Papers of H. Sturzenegger & Cie.

The Department of Justice has received a letter from the Department of State, enclosing a note from the Swiss Legation in Washington with respect to this motion. At the request of the Swiss Legation, the Department of State asks that the note be transmitted to the court and the court advised that the transmission is made as a matter of comity for such value as the court may ascribe to the note, and should not be taken as an espousal of any of the statements in the note. Accordingly, a copy of the letter from the Department of State with the enclosed note is attached hereto.

Respectfully submitted,

[Signed by counsel for defendants.]

January 12, 1951.

2393 COPY

The Secretary of State,
Washington 25, D. C.

DEPARTMENT OF STATE
WASHINGTON

In reply refer to:
L/E

January 11, 1951.

My dear Mr. Attorney General:

The Legation of Switzerland has submitted to the Department of State the attached note with relation to a

motion in the case Civil Action No. 4360-48, Societe Internationale Pour Participations Industrielles et Commerciales S. A., etc. (I. G. Chemié), plaintiff, versus J. Howard McGrath et al., as defendants, in the United States District Court for the District of Columbia.

In accordance with the request of the Legation of Switzerland, the Department desires to have the attached note transmitted to the Court, and pursuant to the general practice in such cases asks the aid of your Office in the matter. Please present the note to the Court at the appropriate time, and in doing so, please advise the Court that this transmission is made as a matter of comity, for such value as the Court may ascribe to the note, but it shall not be interpreted as constituting an espousal by the Department of any of the statements in the note.

Sincerely yours,

For the Secretary of State:
/s/ ADRIAN S. FISHER,
/t/ ADRIAN S. FISHER,
The Legal Adviser.

Enclosure:
Copy of note dated January 10, 1951.

THE HONORABLE J. HOWARD MCGRATH,
Attorney General.

2394 COPY

LEGATION OF SWITZERLAND
WASHINGTON 8, D. C.

The Minister of Switzerland presents his compliments to the Honorable the Secretary of State, and has the honor to bring to his attention the following statement of the Swiss Government.

The Swiss Government has been informed of the motion which was filed by the Office of Alien Property of the Department of Justice on October 31, 1950,

2394

with the United States District Court for the District of Columbia in the civil action of the "Societe Internationale pour Participation Industrielles et Commerciales S. A., Bale" (I. G. Chemie), as plaintiff, versus J. Howard McGrath et al., as defendants. The Swiss Government does not intend to express any opinion with regard to a pending litigation. The motion under reference contains, however, a direct criticism of the position taken by the Swiss authorities in connection with this case. These allegations are of a serious character and since they are entirely unjustified ought to be rejected. The Swiss Government is surprised to be the target of charges of an offensive nature emanating from a Department of the United States Government, and furthermore given to the press, and finds itself compelled to protest against the form and the content of this motion.

2395 The Swiss Government in an endeavor to clarify the facts, both for the American Government and the use of the competent American court, wishes to make the following statements:

(1) Article II, Section E of the Annex to the Washington Accord of May 25, 1946, directs the Swiss Compensation Office to investigate all assets suspected by it or reported to it by the Joint Commission as being or believed to comprise a German property. Inasmuch as I. G. Chemie in Basle was originally founded by the German concern I. G. Farben, the Swiss authorities assumed that it might possibly represent German property and, in accordance with the practice followed in such cases, decreed its blocking. The firm claimed, however, to have severed all connections with Germany and the whole matter was therefore submitted to Swiss experts for a thorough examination which lasted several months. The conclusion reached by the experts was that I. G. Chemie, which had in the meantime assumed the firm name of "Internationale Industrie- und Handelsbeteiligungen A. G. (Interhandel)," could not be considered German property. The United States expressed a contrary opinion and held out proof for this assertion. Despite numerous requests, no

such proof has as yet been adduced. The Authority of Review constituted under Article III, paragraph 1, of the Annex to the Washington Accord decided after minute examination of the case that the enterprise was not German and ordered it unblocked. No appeal to the Arbitral Tribunal having

2396 been lodged within the thirty-day period, the decision of the Swiss Authority of Review became final, in accordance with the express wording of the Washington Accord. Nevertheless, the measures taken in the United States against the American assets of Interhandel were not lifted, thus compelling the firm to seek relief through litigation. This enterprise, being recognized as Swiss, can claim the diplomatic protection of the Swiss Government which holds that the maintenance of the American vesting measures is unjustified and contrary to the Washington Accord. Consequently, the Swiss Government expressly reserves its rights under the Accord.

(2) In the fall of 1948 the question arose in the action under reference whether certain procedural arrangements between the plaintiff Interhandel and the defendant Government of the United States would be permissible on Swiss territory. Article 271 of the Swiss Penal Code declares any person liable to punishment who without authorization performs on Swiss territory an official act on behalf of a foreign country which would be incumbent upon the Swiss authorities or a Swiss Government official. The motion of October 31, 1950, states correctly that Switzerland has consistently denied American consular representatives and other officials the general right to perform official acts on Swiss territory. The position defined in the notes addressed by the Federal Political Department to the American legation in Bern on April 17 and September 5, 1947, corresponds to Swiss law and doctrine and has not been modified since, neither in 1948

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nor in 1950. The letter of the Swiss Legation of
2397 November 29, 1948, quoted in the motion does not constitute a contradiction, since Article 271 provides expressly for exceptions in special cases. The decision whether such an exception can be granted rests exclusively with the Federal Council which has in the past issued similar authorizations in individual cases.

(3) The Swiss Government was motivated by the sincere endeavor to avoid any impression of hampering the task of the American court in ascertaining the complete truth by invoking formal provisions of Swiss law. It examined carefully, therefore, whether the granting of a special authorization could be justified in the Interhandel case. The following considerations led to an affirmative decision:

(a) the Swiss Government knew the details and documents of Interhandel, because of its own investigations of this firm;

(b) it was, furthermore, the understanding of the Swiss Government that in the instant case judicial aid was sought in a civil action as distinguished from the performence of an administrative procedure on Swiss territory (this belief was expressed in the letter addressed to Interhandel on November 25, 1948);

(c) finally, Article 105 of the Federal Law of June 15, 1934, concerning criminal procedure, provides that penal proceedings against violation
of Article 271 of the Penal Code can
2398 only be instituted by the Federal Council itself. The Federal Council was therefore in a position to assure eventual American representatives that no criminal prosecution would be commenced.

For these reasons the Legation of Switzerland in Washington, D. C., was authorized, as an exception,

to issue the statement of November 29, 1948. This declaration explicitly concerned Interhandel and depositions by representatives of that company.

(4) The assurances contained in the communication of the Legation of Switzerland of November 29, 1948, were fully kept by Switzerland: representatives of the defendants were allowed free access to the papers of the plaintiff in Basle. No objections were raised against the crossexamination of the witnesses of the plaintiff.

(5) The Swiss Government, upon learning that the request for the discovery of papers and documents was not limited to the plaintiff, but extended also to an independent Swiss firm not a party to this action, was compelled to reexamine its position in the light of this new aspect which was not known when the letter of November 29, 1948, was drafted. It was ascertained that the firm Sturzenegger & Co. in Basle not only was not a party to this action but was an enterprise subject to special provisions not applicable to Interhandel. The firm Sturzenegger & Co. is a banking institution. Article 47 of the Federal Law of November 8, 1934, concerning banks and savings

2399 institutions provides for penalties against any person who violates the professional secrecy in his capacity as organ, officer or employee of a bank, as banking examiner or accountant, as member of the banking commission or officer or employee of its staff. These facts would without doubt have applied if the papers and documents of the firm Sturzenegger had been exposed to a third person. The great difference, however, between Article 271 of the Penal Code and Article 47 of the banking law consists precisely in the fact that penal proceedings under the latter are not contingent on a decision of the Federal Council but are instituted by the interested parties or the cantonal authorities. The Federal Council, contrary to what

was the case with regard to Interhandel, did not find itself in a position to declare that the submission of the Sturzenegger papers for inspection would not entail punishment. The federal attorney, whose powers and duties are not limited to the prosecution of crimes committed but extend also to the prevention of imminent illegal acts, was therefore compelled to take the action which seemed necessary under the circumstances and which led to the order of June 15, 1950.

The Minister would appreciate it if the text of the foregoing statement would be submitted, at the Department's earliest convenience, to the United States District Court for the District of Columbia.

Washington, D. C.,
January 10, 1951.

2409 Filed February 19, 1951. Harry M. Hull, Clerk.

Opinion on Motion to Reconsider Court's Order of July 5, 1949, Requiring Plaintiff to Produce Records of H. Sturzenegger & Cie. and as to Related Motions.

Three motions are under submission to the Court for decision. 1. A motion to enjoin the Special Master appointed in this cause from considering a motion of defendants to dismiss the complaint for failure of plaintiff to produce papers of H. Sturzenegger & Cie in obedience to order of Court entered July 5, 1949; 2. A motion, filed November 28, 1950, to reconsider that portion of the said order of July 5, 1949, requiring production of records of H. Sturzenegger & Cie; and 3. Motion of intervenor Remington Rand, Inc., for an order staying final determination of defendant's aforementioned motion to dismiss the complaint.

Two related motions have been filed but have not been submitted on oral argument. They are (1) the above-mentioned motion of defendants to dismiss the complaint for

failure to produce the Sturzenegger & Cie papers, and (2) a motion of Eric G. Kaufman and Aenni C. Kaufman to invoke sanctions, other than a dismissal of the complaint as sought by defendants, or, in the alternative, to stay proceedings on defendants'

2410 motion to dismiss the complaint pending determination by appellate courts of the alleged rights of said Eric and Aenni Kaufman in the property which is the subject of this suit.

As pointed out in the written opinion of this Court of June 23, 1949, which decided a production of the papers of Sturzenegger & Cie would be ordered, the claim in defense of this suit is that plaintiff was enemy owned, controlled and tainted at the time its property was vested, and that before the vesting, plaintiff had sought to conceal the true facts of its ownership and control by the use of subsidiaries and affiliates. One of the affiliates mentioned is the banking firm H. Sturzenegger & Cie. There is evidence that at all times material to this case H. Sturzenegger was the head of the banking firm bearing his name, and also was an active participant in managing the affairs of plaintiff. It obviously is of importance to a fair trial that defendants should be assured the right to inspect the Sturzenegger papers. Plaintiff has consistently contended it might not prove possible to produce such papers. For this reason, at the time the Court decided to order their production, it indicated that if it developed plaintiff, after bona fide efforts, was unable to produce the papers as ordered, further action by the Court might be considered.

On June 22, 1950, plaintiff filed a motion to be relieved from producing the Sturzenegger papers for inspection. This motion was based upon a statement that the Swiss Federal Attorney ordered such papers confiscated and had prohibited plaintiff from delivering them for inspection as had been ordered by this Court. There was no showing as to what efforts

2411 plaintiff had made to comply with the Court's order, nor was there any showing as to the legal finality of

the action of the Swiss Federal Attorney. Plaintiff's motion was overruled.

On January 12, 1951, the day of the hearing of the motions now under submission before this Court, counsel for plaintiff submitted a copy of a note sent by the Swiss Minister to the Secretary of State of the United States indicating that the Attorney General of Switzerland had confiscated the Sturzenegger papers and had forbidden their production as ordered by this Court.

If plaintiff's motion for a rehearing is granted and upon such rehearing, the Court should rescind its order of July 5, 1949, to produce the Sturzenegger papers, all of the remaining motions will become moot. The Court therefore should first dispose of such motion for rehearing. But the record now before the Court is entirely inadequate to enable it to act upon such motion. There is no testimony as to what efforts were made by plaintiff to comply with the order of this Court. All that is known is that apparently one who is an executive officer in Switzerland has confiscated the Sturzenegger papers and has forbidden their production. It is not only acts of certain officials of Switzerland that are of concern to this Court. Perhaps of greater importance are the acts of plaintiff in endeavoring to comply with the Court's order. What were its efforts? Did it apply to the executive branch of the Swiss Government for permission to produce the papers, if so, to whom and what was the form of the application? Did it exhaust its efforts through the executive branch or is the Swiss Attorney General the one to make the final decision? Are there any instances where the Swiss law as to secrecy of

2412 records such as those of Sturzenegger & Cie have been waived? If so, by whom and under what circumstances, and did plaintiff seek such a waiver in the present case? Is the Attorney General correct, according to Swiss law, in confiscating the Sturzenegger papers and forbidding compliance with the order of this Court? Was

it not possible for plaintiff to have recourse to the Swiss Courts to obtain the production required in this Court? If so, did plaintiff make an attempt to obtain relief from the Courts of Switzerland? These are some of the items of fact and of Swiss law which should be presented to this Court before it passes on plaintiff's motion for a rehearing. There may be many others.

It is difficult to conceive a more important question to be decided than now confronts this Court. The Courts of the United States customarily vouchsafe access to pertinent evidence in the possession and under control of parties litigant. In this case, defendants, as well as plaintiff, have been and will be required to exhibit voluminous records under their control. Yet when plaintiff is required to make exhibit of certain records which may be of vital importance to the outcome of this case, records of an affiliate, the claim is made it should not be required because an executive of a foreign nation forbids it. It may be true (although the Court does not now decide) that a foreign nation, if it acts through its authorized representative, has the authority to defeat the customary procedures of United States Courts. But before this will be permitted, the courts of the United States will require the party litigant whose papers are withheld to show clearly that it has in good faith exhausted all reasonable efforts to make possible the carrying out of the usual court procedures.

2413 The facts as to which this Court should be informed may more readily be ascertained by the Special Master than by a direct hearing in this Court. Conceivably they may be only fully available from records and witnesses in Switzerland. One of the principal reasons for the appointment of the Special Master was to make it possible for him to examine voluminous records and take testimony of witnesses in Switzerland which might not readily be produced in this country. Plaintiff has objected to this procedure in respect of the pending motions and seeks to have the Court enjoin the Master

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from taking such testimony. The claim is that the testimony relates to defendants' motion to dismiss the complaint in this case, which in effect seeks to adjudicate plaintiff in contempt of Court, and that in a contempt case, evidence must be received directly by the Court. But this argument does not apply to evidence applicable to plaintiff's motion to reconsider the Court's order to produce the Sturzenegger papers. As pointed out, if the Court on reconsideration should rescind its said order, defendants' motion to dismiss will become moot. On the other hand, if it develops the motion to reconsider is denied, the Court then may decide whether it will require evidence to be submitted directly to it in consideration of the motion to dismiss.

The Special Master will be ordered to take evidence as to the good faith of plaintiff in its efforts to comply with the order of this Court to produce the Sturzenegger papers, and report his conclusions to the Court for consideration in connection with plaintiff's motion to reconsider the Court's action of July 5, 1949.

Action on the remaining motions will be suspended.

/s/. BOLITHA, J. LAWS,
Chief Judge.

February 15, 1951.

2414 Filed February 23, 1951. Harry M. Hull, Clerk.

Memorandum Opinion on Plaintiff's Request to Allow Further Oral Argument Regarding the Court's Opinion of February 15, 1951.

Whether plaintiff's motion to reconsider is directed to the Court's order of July 5, 1949, or to plaintiff's motion of November 28, 1950, the object is the same, that is, to be relieved from producing the Sturzenegger papers ordered by this Court.

Whether Sturzenegger & Cie. is an affiliate of plaintiff or a banking institution controlled by one of plaintiff's directors does not affect the result of the Court's decision that the papers should be produced.

There can be no possible reason for the Government of Switzerland to be affronted because a litigant in the courts of the United States is required to show efforts in good faith to comply with the Court's order before it is relieved from doing what litigants customarily are required to do by the laws of the United States.

Plaintiff's argument as to the organization of the Government of Switzerland, of which this Court is asked to take judicial notice, does not point out how the banking laws of Switzerland have been interpreted, whether under any

2415 circumstances banking records may be available under these laws for use in foreign courts, or why in the Republic of Switzerland the courts are not available to determine questions of this character. This Court has understood that the laws, procedures and interpretations of laws of one nation are questions of fact in courts of a different nation. *Church v. Hubbart, 2 Cranch (U. S.), 187; Ennis v. Smith, 14 How. (U. S.), 400; Nashua Savings Bank v. Anglo-American Co., 189 U. S. 221.* If this Court is mistaken as to this and it has the right to take judicial notice of such laws, interpretations and procedures, it may nevertheless be advised on the subject by authorities other than counsel for litigant.

It has been pointed out that the Special Master may get facts not readily available to this Court. He may also readily obtain for submission to the Court what is the status of foreign laws and procedures.

This Court has made it clear that the question of plaintiff's good faith in the matter of producing the Sturzenegger papers is one as to which evidence should be obtained. It has carefully considered lengthy arguments of counsel on the subject. It will be vain to grant plaintiff's counsel

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opportunity to make further argument, when evidence is what the Court requires. The Court will enlarge its order of reference to authorize the Master to attempt to obtain the evidence.

Request for further oral argument is denied. Any objections to the form of the order based on the Court's ruling which has been submitted by defendants should be submitted in writing on or before February 27, 1951.

/s/ BOLITHA J. LAWS,
Chief Judge.

February 23, 1951.

2416 Filed March 1, 1951. Harry M. Hull, Clerk.

Order.

On consideration of the plaintiff's motion dated November 6, 1950 to enjoin the Special Master from considering a motion of defendants to dismiss the complaint for failure of plaintiff to produce papers of H. Sturzenegger et Cie. in obedience to the order of this Court entered July 5, 1949, and after hearing, and on consideration of plaintiff's motion dated November 28, 1950 for a reconsideration of plaintiff's motion of June 22, 1950 to be relieved of that portion of the order of July 5, 1949 requiring production of records of H. Sturzenegger et Cie., and after hearing, and on consideration of the motion of intervenor Remington Rand Inc., dated January 18, 1951 for an order staying final determination of defendants' aforementioned motion to dismiss the complaint, and on all the papers filed herein, including the said motion of defendants to dismiss complaint and the motion of Eric G. Kaufman and Aemni C. Kaufman to invoke sanctions other than dismissal of complaint as sought by defendants, and after filing an opinion dated February 15, 1951, it is

ORDERED:

(1) William J. Hughes, Jr., Esq., as Special Master and in a manner not inconsistent with the said opinion of February 15, 1951

2417 will hold proceedings and take evidence as to the good faith of plaintiff in its efforts to comply with the order of July 5, 1949 to produce the Sturzenegger papers and will report his findings and conclusions to the court for consideration in connection with plaintiff's said motion of November 28, 1950.

(2) Action on the remaining motions is suspended.

/s/ Bolitha J. Laws,
Chief Judge.

March 1, 1951.

2421 Filed July 2, 1951. Harry M. Hull, Clerk.

Plaintiff's Reply to Defendant's Second, Third, Fourth and Fifth Counterclaims.

REPLY TO SECOND COUNTERCLAIM

First Defense

Defendant's second counterclaim fails to state a cause of action against plaintiff upon which relief can be granted.

Second Defense

This Court has no jurisdiction in respect of the disputes reflected in defendant's second counterclaim, for the reason that, according to Section 36 of the Articles (Statuten) of the plaintiff corporation, such disputes shall be settled by arbitration and no recourse shall be had to ordinary legal proceedings.

Third Defense

(1) Plaintiff says that the first paragraph of the second counterclaim contains only conclusions of law which it is not required to answer.

2422 (2) Plaintiff admits the averments contained in the second paragraph except that it denies that the shares of stock, referred to therein, which are claimed by it, were lawfully vested, and it has no information or knowledge sufficient to form a belief as to the truth of the aver-

ments therein relating to the 20,031 shares which it does not claim.

(3) Plaintiff admits the averments of the third paragraph.

(4) Answering the fourth paragraph, plaintiff admits that certain shares of its own stock, owned by General Aniline & Film Corporation, were attempted to be declared as dividends upon the shares of General Aniline & Film Corporation stock owned by plaintiff, but plaintiff avers that this was not lawfully done, and it denies that the defendant McGrath and his predecessors as Alien Property Custodian have held and now hold such shares as lawful owners thereof. Plaintiff has no information or knowledge sufficient to form a belief as to the truth of all the remaining averments of paragraph four.

(5) Plaintiff admits the averments of the fifth paragraph.

(6) Plaintiff admits the averments of the sixth paragraph.

(7) Answering the seventh paragraph, plaintiff admits the first sentence thereof except that it has no information or knowledge sufficient to form a belief as to the truth of the averment therein that the 822 50% paid bearer shares mentioned therein and elsewhere in said paragraph are the same ones referred to in paragraph (4) of the second counterclaim, or that such shares were received by the Alien Property Custodian as averred in said fourth paragraph. The averments of the second sentence of said seventh paragraph are admitted. As to the third and last sentence of said paragraph seven, plaintiff denies that it has seized and confiscated the shares mentioned in said paragraph, or converted them to its own use; admits that it has refused to recognize the defendant's predecessor as holder in due course of said shares for the reason that plaintiff denies that he is such a holder or it has no information or knowledge sufficient to form a belief as to the truth of the aver-

ments that he is such holder; admits that it has refused to deliver 411 100%-paid shares
2423 issued in place of the 822 50%-paid shares, but denies that it has retained the same unlawfully, and avers that it is holding said shares for the lawful owner thereof as this may be determined by the Swiss Compensation Office, acting under and pursuant to the Washington Accord of 1946 (to which the United States is a party), which office has exclusive jurisdiction over the subject matter since the plaintiff is located in Switzerland and the certificates for such shares are physically there also.

(8) Plaintiff admits that the quotation of its 100%-paid shares on the Swiss stock exchanges on May 11, 1949, was approximately at the equivalent value in Swiss francs of the figure mentioned in paragraph 8; but it has no information or knowledge sufficient to form a belief as to the truth of the amount of value of said shares other than as stated herein.

Plaintiff denies each and every averment of said second counterclaim not hereinbefore expressly admitted; and having fully answered the second counterclaim of the defendants, plaintiff says that the defendant is not entitled to the judgment demanded in respect thereof, and that said second counterclaim should be dismissed with costs.

REPLY TO THIRD COUNTERCLAIM

First Defense

Defendant's third counterclaim fails to state a cause of action against plaintiff upon which relief can be granted.

Second Defense

This Court has no jurisdiction in respect of the disputes reflected in defendant's third counterclaim, for the reason that, according to Section 36 of the Articles (Statuten) of the plaintiff corporation, such disputes shall be settled by arbitration and no recourse shall be had to ordinary legal proceedings.

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THIRD DEFENSE

(1)-(7) The plaintiff incorporates into and makes a part of this third defense to paragraphs one to seven, inclusive, of the third counter-

2424 claim its answers to paragraphs (1) to (7) of the second counterclaim.

(8) Plaintiff is advised that it is not required to answer the averments of the eighth paragraph because (a) it has no information or knowledge sufficient to form a belief as to the truth of the basis alleged for defendant's belief as stated therein; (b) said paragraph does not contain averments of fact but only conclusions and predictions of the defendant; and (c) the averments are hypothetical and argumentative. If these points should be raised by a motion to strike, plaintiff prays that the Court treat this paragraph of its reply as such a motion; or if plaintiff should be required to make answer to said paragraph eight, other than as done herein, plaintiff asks leave to do so after the Court has so ruled.

(9) Plaintiff says that the averments of paragraph nine constitute conclusions and arguments of the defendant, and plaintiff is not required to answer the same; but if required to make answer thereto, plaintiff denies all the averments thereof.

(10) Plaintiff incorperates herein, as its answer to paragraph ten of the third counterclaim, the answer which it has made herein to paragraph eight of the second counterclaim.

Having fully answered the third counterclaim of the defendant, plaintiff says that the defendant is not entitled to the judgment demanded in respect thereof, and that said third counterclaim should be dismissed with costs.

REPLY TO FOURTH COUNTERCLAIM

FIRST DEFENSE

Defendant's fourth counterclaim fails to state a cause of action against plaintiff upon which relief can be granted.

SECOND DEFENSE

This Court has no jurisdiction in respect of the disputes reflected in defendant's fourth counterclaim, for the reason that, according to Section 36 of the ARTICLES (STATUTEN) of the plaintiff corporation, such disputes shall
2425 be settled by arbitration and no recourse shall be had to ordinary legal proceedings.

THIRD DEFENSE

(1) Plaintiff says that the first paragraph of the fourth counterclaim contains only conclusions of law which it is not required to answer.

(2)-(7) The plaintiff incorporates into and makes a part of this third defense to the fourth counterclaim its answer to paragraphs (2) to (7) of the second counterclaim.

(8) Answering the eighth paragraph, plaintiff says that the order referred to speaks for itself and plaintiff is not required to answer defendant's paraphrase thereof.

(9) Plaintiff makes the same statement regarding paragraph nine of the fourth counterclaim as it hereinbefore made regarding paragraph eight of the third counterclaim, and it therefore incorporates the same herein as a part hereof.

(10) Plaintiff says that the averments of paragraph ten constitute conclusions and arguments of the defendant, and plaintiff is not required to answer the same; but if required to make answer thereto, plaintiff denies all the averments thereof; and it says that defendant concedes that, for other reasons, there is a cloud on his alleged title to the shares mentioned in said paragraph, such concession being shown in paragraph 5(a) of "Supplemental Prayers for Relief," appearing at the end of defendant's counterclaims.

(11) Plaintiff denies the value of the shares averred in the eleventh paragraph of the fourth counterclaim.

Having fully answered the fourth counterclaim of the defendant, plaintiff says that the defendant is not en-

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titled to either of the judgments demanded in respect thereof, and that said fourth counterclaim should be dismissed with costs.

2426 REPLY TO FIFTH COUNTERCLAIM

FIRST DEFENSE

Defendant's fifth counterclaim fails to state a cause of action against plaintiff upon which relief can be granted.

SECOND DEFENSE

This Court has no jurisdiction in respect of the disputes reflected in defendant's fifth counterclaim, for the reason that, according to Section 36 of the ARTICLES (STATUTEN) of the plaintiff corporation, such disputes shall be settled by arbitration and no recourse shall be had to ordinary legal proceedings.

THIRD DEFENSE

(1) Plaintiff says that the first paragraph of the fifth counterclaim contains only conclusions of law which it is not required to answer.

(2)-(7) Plaintiff incorporates and makes a part of this third defense to the fifth counterclaim its answers to paragraphs (2) to (7) of the second counterclaim.

(8) Plaintiff makes the same statement regarding paragraph eight of the fifth counterclaim as it hereinbefore made regarding paragraph eight of the third counterclaim, and it therefore incorporates the same herein as a part hereof.

(9) Plaintiff says that the averments of paragraph nine constitute conclusions and arguments of the defendant, and plaintiff is not required to answer the same; but if required to make answer thereto, plaintiff denies all the averments thereof; and it says that defendant concedes that, for other reasons, there is a cloud on his alleged title to the shares mentioned in said paragraph, such concessions being shown in paragraph 6(a) of "Supplemental

Prayers for Relief," appearing at the end of defendant's counterclaims.

(10) Plaintiff incorporates herein, as its answer to paragraph ten of the fifth counterclaim, the answer that it has made herein to paragraph eight of the second counterclaim.

2427 Having fully answered the fifth counterclaim of the defendant, plaintiff says that the defendant is not entitled to either of the judgments demanded in respect thereof, and that said fifth counterclaim should be dismissed with costs.

[Signed by counsel for plaintiff.]

* * *

2428 Filed August 22, 1951. Harry M. Hull, Clerk.

Defendants' Trial Brief Before Special Master.

* * *

2432 (2) WAIVER OF BANK SECRECY BY ACTION OF INDIVIDUALS.

Having been instituted in the interest of the customer, bank secrecy is lifted if waived by the customer. If the customer (or, if he has died, his heir) does not desire that a certain transaction be kept secret but prefers its disclosure or is simply indifferent, the bank no longer keeps the fact a secret. The Supreme Court of Switzerland has decided that the bank does not have a right of its own to keep matters secret (St. Def. Exs. 4(27), 5(43); St. Tr. 66-7, 77; H. Tr. 542-3). Consequently, once there has been a waiver, disclosure by the banker can under no circumstances be a violation of bank secrecy (St. Tr. 197, 209; H. Tr. 448-9). The significance of this principle of law is, of course, that it shows plaintiff's bad faith in not soliciting waivers of the privilege from its many subsidiaries and associates whose affairs were recorded in Sturzenegger's papers, in not waiving the secret for its own affairs with

Sturzenegger, and in not arguing to its government that the principle of the law of waiver made the decree illegal.

* * *

2460 B. No Waivers Given or Solicited.

In addition to efforts of persuasion, Chemie could have taken many affirmative steps with Sturzenegger to facilitate production. As shown above in Point I, there can be neither violation of bank secrecy nor economic espionage if the owner of the secret gives a waiver. Accordingly, Chemie should have given to Sturzenegger all waivers within its powers. It should have given a waiver for all of its own dealings with Sturzenegger and for those of all of its subsidiaries. And it should have solicited waivers from its officers, from the companies in which it had substantial holdings, and from other customers of Sturzenegger with whom it had financial and economic influence.

The order for production of the Sturzenegger papers dates from July 5, 1949. In the following year before the confiscation of the papers, Chemie neither gave nor solicited any waivers. The fact that Chemie did not waive even its own secrets in the Sturzenegger records is proof in and of itself that Chemie acted in utter bad faith. For waiver of its own secrets is the very minimum which could be demanded of Chemie.

Germann did not mention waivers in his direct examination, an indication of plaintiff's overall view on the efforts it was required to make. The testimony elicited from him on cross-examination is destructive of

2461 plaintiff's case. It appears that Germann did discuss with Sturzenegger the production of the Sturzenegger records on Chemie and its subsidiary Osmon. Instead of giving a waiver, they set themselves up as judges and decided that defendants did not need these documents since they were only the counterparts of documents in the Chemie and Osmon files. They thought that it "might even sound ridiculous to Judge Laws if we would send the twin file!" (G. Tr. [R. 4987-4989]). Germann did not bring up

the question of waivers generally in his discussions with Sturzenegger, and the two did not talk about production of a part of the Sturzenegger papers (G. Tr. [R. 4987]). They never considered what documents could be shown if waivers were obtained or what papers would not even require a waiver (G. Tr. [R. 4987, 4998]).

At the Master's request, defendants incorporated into the record (G. Tr. [R. 4939-4962]) a statement of the names of the companies, consortia, secretariats and individuals, with respect to which I. G. Chemie or its officer, Mr. Sturzenegger, or both jointly, could have arranged for waivers and thereby have removed all possible hindrances to production.[12] With specific references to the transcript of the Sturzenegger deposition, the material in the record sets forth in detail Sturzenegger's waiver of the privilege during his deposition with respect to each company, secretariat, consortium and individual. The statement includes also the names of certain persons or companies with respect to which, from the nature of things, waivers could have been obtained. The list includes (1) I. G. Chemie, its officers and directors (G. Tr. [R. 4948-4950]); (2) subsidiaries of Chemie (G. Tr. [R. 4940-4942]); (3) a number of companies in which Chemie had very substantial investments (G. Tr. [R. 4942-4948]); (4) the group of Sturzenegger subsidiaries and participants (G. Tr. [R. 4950-4953]); (5) the companies in the Sturzenegger Circle; the individuals involved and the closely connected companies (G. Tr. [R. 4953-4956]); (6) the consortia and secretariats on the Sturzenegger

2462 books (G. Tr. [R. 4956-4957]); (7) I. G. Farben, its subsidiaries and individuals connected with Farben (G. Tr. [R. 4958-4959]); (8) firms connected with I. G. Farben and the Sturzenegger firm (G. Tr. [R. 4957-4958]); and, finally, (9) a miscellany (G. Tr. [R. 4959-4962]).

[12] Although plaintiff was given an opportunity to contradict the statements in the list before the conclusion of the proceeding, if it disagreed (G. Tr. [R. 4940]), it has failed to raise any objections.

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This list (G. Tr. [R. 4939-4942]) suggests the enormous number of documents which would have been freed for inspection by waivers. We dare say that for all practical purposes those documents amount to the total of all the Sturzenegger papers.[13]

[Signed by counsel for defendants.]

August 21, 1951.

2509 Filed December 4, 1951. Harry M. Hull, Clerk.

Report of Special Master.

The present Report will be divided into (1) Opinion of Master; (2) Findings of Fact; (3) Conclusions of law.

OPINION

OUTLINE OF OPINION:

The Master has concluded that the plaintiff has shown good faith in its efforts to comply with this Court's Order of July 5, 1949 to produce the Sturzenegger & Co. papers.

There is no proof, or any evidence at all of collusion between plaintiff and the Swiss Government in the seizure of the papers herein. The Swiss Government did not, as charged, authorize their inspection and later retract the authorization. The Swiss diplomatic note of November 29, 1948 authorized the taking of plaintiff's, not Sturzenegger & Co.'s deposition in Switzerland and the use of documents as an incident thereto. It did not refer to an inspection of documents en masse at all; the project of an inspection of the Sturzenegger documents was not formulated, or at

[13] On his deposition, Mr. Sturzenegger testified that he had probably not more than between 50 and 100 customers, and despite persistent efforts, he could not remember the name of a single customer outside the Farben Complex (Sturzenegger Deposition, [R. 8014, 8029, 8050]).

2510 least not exteriorized until January 18, 1949 when the Government filed its Motion to Inspect.

There is nothing to show the Swiss Government relaxed its laws, still less its Constitution at plaintiff's behest. When it found its authorization covering plaintiff's deposition was being interpreted to cover a mass inspection of papers of a Swiss bank in Switzerland, in violation of Swiss law, as it saw it, the Swiss Government seized the documents under its preventive police power. Although the experts on Swiss law differed about it, the better view is that such preventive police power existed in the circumstances herein and there is a legal basis for its exercise (from the Swiss viewpoint) to prevent imminent violations of Article 273 of the Swiss Penal Code and Article 47 of the Bank Law.

The plaintiff made substantial efforts to secure production of the documents both before and after the seizure. It took the means which seemed most likely in its opinion to succeed. Whether other or different efforts might have been successful is conjectural; in any event a mistake of judgment, if found, is not chargeable against plaintiff in an inquiry into its good faith.

Obtaining waivers would not appear, at any time, to offer a solution to the problem of the production of the papers.

In view of the voluminous record and the importance of the question, the present Opinion will deal with the questions involved in extenso.

THE PRESENT REFERENCE:

On June 15, 1950 the Swiss Federal Attorney, Dr. W. Lüthi, issued the following order:

Translation

"OFFICE OF THE
SWISS FEDERAL ATTORNEY

No. Vo/st ORDER.

In the matter of the banking firm H. Sturzenegger & Co. in Basle, St. Jakobsstrasse 46, which has become

known to the Office of the Swiss Federal Attorney, concerning the order of the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA to produce business records of the banking firm

2511 H. Sturzenegger & Co. in the action of the "Internationale Industrie- und Handelsbeteiligungen A.-G., Basle" against the

ATTORNEY GENERAL OF THE UNITED STATES IN WASHINGTON

in consideration,

that the production of these records would constitute the fact of prohibited economic espionage (Art. 273 penal code) and would also violate the bank secrecy (Art. 47 of the Federal Law of 8th November, 1934, regarding banks and savings banks; Official Collection 51, 134), which offences the Federal Authorities have to prevent in order to maintain the public security and order on the basis of their preventive police power,

it is ordered:

1. All the business records or books of the banking firm H. Sturzenegger & Co. in Basle ordered to be produced by the American judge are herewith confiscated.
2. The banking firm H. Sturzenegger & Co. will consequently be prohibited, until further notice, from delivering any business records or books or copies of these to third parties or from permitting third parties to inspect their business records.
3. The Federal Police is entrusted with the execution.

Berne, 15th June, 1950.

THE FEDERAL ATTORNEY:
sig. LUTHI" (Germann Ex. 12A).

This order was served on Sturzenegger et Cie. by the Swiss Federal Police on June 21, 1950 (Tr. Germ. 53) and thereafter the papers were "frozen" in the possession of Sturzenegger & Co. (Tr. Germ. 382-383). Under Arti-

cle 289 Penal Code any violation of the Order was punishable with fine and imprisonment. (Hug Ex. 2)

2522 The question arises as to what weight should be given the Swiss note of January 10, 1951.[2] The Intervenor herein argues the note is conclusive as to questions of Swiss law.[3] The note is a protest against alleged unjust criticism
2523 of acts of the Swiss Government made in the Government's Motion to Dismiss. It attempts to clarify the situation by stating the true facts from its viewpoint and the grounds for its prior decision. It is unnecessary to attempt to attach to the note the finality of an act of state; it seems sufficient to consider it as the assurance of one sovereign state to another that its note of November 29, 1948 was intended to include a given subject matter and exclude another. Its force inheres in the basic concept of evidence that people normally tell truths and not untruths; impeachment lacking, the same principle applies to nations. There is no convincing impeachment. The evidence does not show that the Swiss Government is aligned with plaintiff and at its command or that the relationship is other than the usual relationship of a government to one of its nationals. The Government's expert witness, Professor von Steiger, repudiated any charge of a coalition between the Swiss Government and plaintiff. (Tr. von St. 815-820). There is an inherent contradiction in postulating that the Swiss Government colored its note of January 10, 1951 to aid plaintiff when it is evident its main act, the seizure of the papers, might be utterly destructive of plaintiff's chance of success.

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[2] The Government does not charge that this specific note was collusory but that it shows "that the Swiss Government desired very greatly to aid the plaintiff in its efforts." (Tr. Oct. 15, 1951, p. 56). There are however broad charges of collusion in the Government's Motion to Dismiss. (Collected in Plaintiff's Reply Brief herein, p. 3, footnote).

[3] Intervenor's Reply Brief.

2531

2531 Secondly, as to lack of plaintiff's efforts "with Sturzenegger" during this period, no efforts were ever needed to persuade Sturzenegger[1] or his company. There is nothing in the record to show anything other than that both Sturzenegger personally and his company were entirely willing throughout to produce the papers. (Tr. Germ. 38-39, 52, 55-57, 354, 75-79, 148-149, 155-157, 300-301, 306-315, 379-380; see present Report p. 33-41 [R. 2541-2549]).

* * *

2533 . . . Sturzenegger himself was the dominant personality certainly in his own company and perhaps in both companies and most of his personal fortune was invested in Interhandel whose principal asset is its claim of ownership of the General Aniline and Film Co. shares here in suit. (Pl.'s letter Nov. 24, 1948, Germ. Ex. 1(a), Tr. 236, [R. 5082-5085] see also Germ. 161). There was therefore ample incentive for Sturzenegger & Cie. even after the repayment to produce the documents for plaintiff's benefit.

Germann did not mention the May 27 repayment notice to plaintiff's attorney at the time,[2] apparently not realizing its importance until after the July 5 order was signed and the problem of production became acute. At the latter time he realized that the May 27 letter, coupled with the August 27, 1949 repayment lessened or ended Interhandel's influence on Sturzenegger & Cie. (Tr. Germ. 146-147). He sent copies of these letters to Mr. Wilson, plaintiff's attorney, subsequent to August 1949.

There is no showing of collusion between the parties in the matter of May-August repayment. If the repayment

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[1] This Court remarked at the April 18, 1950 hearing, p. 35:

"He may have a problem but it may be solved. I don't think it is Sturzenegger."

[2] The Court heard argument on April 8 and took the matter under advisement until its decision June 23, 1949, which led to the order of July 5, 1949 requiring plaintiff to produce the Sturzenegger & Cie. papers.

had been promoted by plaintiff, it is reasonable to suppose it would have made some use of it in Court. Germann was aware at the time that this Court was considering plaintiff's motion to be absolved of producing the Sturzenegger documents, and that the matter was very important. Germann said later he was confident the Court would rule in plaintiff's favor (Tr. Germ. 145) but plaintiff did not use its lack of investment in Sturzenegger & Cie. as an argument either then or later. In the argument before this Court on April 18, 1950 plaintiff's attorney expressly disclaimed the repayment as an excuse for
2534 non-production of the Sturzenegger papers. (Tr. Germ. 151; Tr. Apr. 18, 1950, p. 23).

* * *

2537 PLAINTIFF'S AWARENESS OF IMPORTANCE OF PRODUCING STURZENEGGER ET CIE PAPERS:

Plaintiff was continually aware of the importance attached to the Sturzenegger & Cie. papers by the Government and must have realized that a day of reckoning lay ahead if they were not produced. The documents filed by the Government in support of its motion of January 18, 1949 to inspect them included the voluminous Swiss Compensation Office's reports of 1947, (Gov. Mot. to Prod., Ex's. A, B and C), replete with references to Sturzenegger & Cie. and its predecessor and setting forth at length their activities with respect to plaintiff. The affidavit of the Government's principal attorney filed in support of the Motion for Production of Documents likewise shows the importance of Sturzenegger & Cie. (Affid. pp. 2-5); he refers to the latter as "a branch office of the plaintiff". (Affid. p. 4). Plaintiff's Supplemental Memorandum in opposition, filed January 25, 1949, is almost entirely devoted to contentions that plaintiff did not have custody or control of the Sturzenegger & Cie. papers and that there was an insufficient designation; there is no effort to mini-

mize their importance. The Government's answering memorandum, as to designation,

2538 asks that at least the 55,500 documents of Sturzenegger & Cie. examined by the Swiss Compensation Office should be produced. (Gov. Suppl. Memo Feb. 18, 1949, p. 2). It described Sturzenegger & Cie. as a subsidiary of plaintiff and cited various data in support of this claim. (Same memo, p. 5). At the hearing before this Court of these motions the Government stated that Sturzenegger & Cie. had been the "dominant controller" of plaintiff for I. G. Farben. (Tr. Feb. 18, 1949, 12). It related several transactions of Mr. Sturzenegger which it claimed showed a substantial connection with I. G. Farben. (p. 22-29). The Government referred once more to the 55,000 documents and 110 account books in Sturzenegger's premises (p. 33). The Government charged that Sturzenegger was the conduit of I. G. Farben in dealing with several hundred of Farben's sales agencies, to whom money passed thru Sturzenegger & Cie. (Tr. Feb. 18, 1949, 3b-4b). During the process of attempting to obtain an order for inspection, the Government addressed a letter to this Court on February 24, 1949, sending a copy to plaintiff's chief attorney, which stated that "the Sturzenegger firm is the alter ego of the plaintiff".

The Government's Supplemental Memorandum filed March 17, 1949 sets forth fully at p. 4 the importance of the role of Sturzenegger & Cie. in plaintiff's case; that it is the alter ego of plaintiff; that each is meshed into the other, that their files are commingled etc. As for designation of Sturzenegger & Cie's. documents, it refers once more to the 700 jackets and 140 account books examined by the Swiss Compensation Office. (See also Tr. Apr. 1, 1949, p. 39-40; Gov. letter to Court, Apr. 13, 1949).

The Government's First Separate Defense filed March 4, 1949 alleges a broad conspiracy between plaintiff and Sturzenegger & Cie. and its predecessor, Ed. Greutert & Cie., to cloak the ownership by I. G. Farben of properties

all over the world. This was mentioned at the April 1, 1949 argument. (Tr. Apr. 1, 1949, p. 14-30). The Court stated:

> "THE COURT: * * * As I understand it, you want to make a full and complete study, which I would judge would be entirely proper under the new rules, of Sturzenegger's partnership and all of their various and sundry connections and get all of their records and look at them and study them and see what you think is pertinent * * *." (Tr. Apr. 1, 1949, p. 24).

2539 The question of whether plaintiff had possession or control of the Sturzenegger & Cie. papers took up a large part of the hearing on April 1, 1949, (Tr. Apr. 1, 1949, p. 1-30; 62-73) and was discussed at length in plaintiff's memorandum of April 12, 1949 (p. 6-7) and in the Government's letter of April 13, 1949 to the Court. The general problem was discussed by Germany with plaintiff's American attorney in the fall of 1949; the latter told him he would ask the court to have plaintiff excused from their production. (Tr. Germ. 304-305).

Enough has been recited to indicate the surpassing importance attached by the Government to the Sturzenegger & Cie. papers. Yet it is significant that at the first hearing on the question, February 18, 1949, plaintiff's objection was not to their production but that they were insufficiently designated. The transcript of the February 18, 1949 hearing, Vol. A and Vol. I shows throughout merely an insistence by plaintiff's attorney that the Government should designate the Sturzenegger papers it desired to inspect; there was no claim by plaintiff they should not be examined at all. Plaintiff's attorney stated:

> "With reference to Mr. Schwartz's order, the idea that there might be some incorporation by reference of the items in the Swiss Compensation Office report seems an excellent one. The additional items he also mentioned I can see no valid objection to. They are categories, and they could be relevant categories—

2539

there is no question about that." Vol. 1, Tr. Feb. 18, 1949, p. 5b).

As already seen, the Swiss Compensation Office report was filled with references to Sturzenegger & Cie. The "additional items" referred to are apparently Sturzenegger's papers also. (See Vol. 1, tr. Feb. 18, 1949 p. 2bb-4b).

The answer of plaintiff's attorney to the Government's letter of February 24, 1949 encloses an alternative designation of plaintiff's papers for Government inspection namely "all writings to or from or with relation to Ed. Greutert & Cie., H. Sturzenegger & Cie". Plaintiff's objection to being forced to produce the Sturzenegger & Cie. papers seems to have been precipitated by the Government's letter to this Court of February 24, 1949 stating:

2540 "We understand at the hearing that plaintiff's counsel conceded the Sturzenegger papers; at least all his arguments were premised on such a concession."

This produced an answer from plaintiff of the same date stating in par. 3:

"(b) We oppose the inclusion of the records of H. Sturzenegger & Cie. because plaintiff does not have the possession, custody and control of them, as required by the Rule, and that partnership is not a party to this litigation. At no time have we conceded the contrary." (Letter Pl's. attorney Feb. 24, 1949).

This emphasized lack of control, not relevancy.

At the hearing on the inspection motions April 1, 1949, plaintiff's attorney argued plaintiff's lack of control over Sturzenegger & Cie. and filed a cable and affidavit from its managing director, Walter Germann, in support thereof. However, he stated:

"The affairs of H. Sturzenegger and Company may be relevant to this suit, and the testimony of Sturzenegger is relevant, and a duces tecum in Switzerland for the production of the records of H. Sturzenegger & Company served upon Mr. Sturzenegger might very

well produce matter which comes within the scope of this inquiry. But this motion directed at the party —and Your Honor will remember that Rule 34 is limited to parties—must be predicated upon establishing the possession or custody or control in the party of the books and records which are sought." (Tr. Apr. 1, 1949 p. 8-9).

Plaintiff's counsel also stated:

> "There is nothing more serious in our minds in this lawsuit than our inability to produce the records of H Sturzenegger & Company." (Tr. Apr. 1, 1949, p. 10).

And again:

> "the thing that is uppermost in my mind and always has been, is this matter of Sturzenegger and Company, whose records we cannot produce."[1] (Tr. Apr. 1, 1949, p. 12).

The above shows plaintiff conceded the relevancy of the Sturzenegger & Cie. papers; plaintiff even suggests they may be obtained by a *subpoena duces tecum;* what plaintiff objects to its that *plaintiff* should be responsible for producing them. There cannot be any question but what plaintiff realized all through 1949-1951 the supreme importance to its case of producing the Sturzenegger & Cie. papers. This thought must be borne in
2541 mind when we come to evaluate plaintiff's efforts to have the papers produced.

* * * *

2544 POSSIBILITY OF PARTIAL PRODUCTION OF PAPERS:

After Dr. Luthi's refusal, Mr. Germann discussed with Mr. Sturzenegger the possibility that some of the papers could be produced. "We talked it over together, and he was looking for possibilities to do it; and I repeated the

[1] At the same time, plaintiff's attorney stated that as to Osmon, although it had respectable authority against requiring a party to produce the records of a wholly owned subsidiary, it would not oppose inclusion in the order of a requirement to produce Osmon's records. (Tr. Apr. 1, 1949, p. 12).

2544

desirability that he would do it". Germann stated "I had the feeling that certain papers could be produced, although I was not certain about it". (Tr. Germ. 341). He did not mean particular papers. He was not sure whether he talked over with plaintiff's counsel, Dr. Wehrli, whether they could with propriety, despite Dr. Luthi's statement, produce certain papers on their own responsibility. (Tr. Germ. 342-343) "I think we looked more for solutions to comply with the order, and the order was to produce all the documents. That was our aim at that time." (Tr. Germ. 343). He stated:

> "As I told you already, at that time we searched for a means to comply with the order and the order asked for production of all of the Sturzenegger documents." (Tr. Germ. 346).

As to making a list of things that might be produced, Germann stated:

> "I don't think the problem hit us that way at that time. We saw the import, and Dr. Sturzenegger tried to comply with the totality of the order." (Tr. Germ. 308).

As to producing part of the papers, Germann discussed this with Dr. Rehsamen and Dr. Schnyder of the Political Department but these gentlemen had the seizure order fresh in their minds and did not see how it could be changed. Germann was afraid to insist as he did not wish to disturb the imminent inspection of plaintiff's documents. (Tr. Germ. 324). Germann stated:

> "It was not a request. I explored it and I got a negative reaction. Therefore I did not insist because I wanted not to jeopardize the other phase[1] which seemed to me of predominant importance." (Tr. Germ. 326).

2545 During the months the problem was under consideration prior to the seizure, they thought they

[1] The forthcoming inspection of Chemie's papers.

would be able to produce such Sturzenegger & Cie. papers as dealt with plaintiff, Osmon, Parta, Voorindu, Chemo, I. G. Farben and other such companies, up until the order came, out of a clear sky, on June 21.[1] (Tr. Germ. 311). He and Sturzenegger thought that many files could be produced. (Tr. Germ. 311-312). They were under a strong apprehension, because of Dr. Luthi's attitude but they had no firm prohibition and

> "we thought, as Dr. Sturzenegger had done in the oral testimony, that we could decide ourselves if problems of secrecy would arise." (Tr. Germ. 312).

Germann said:

> "we saw the difficulties. But we thought that it would be possible to divulge papers which in our own minds did not constitute secrecy. For example, our own files, Osmon Files." (Tr. Germ. 313).

Prior to receipt of the order on June 21, 1950:

> "The status was that we were in that dilemma, that especially Dr. Sturzenegger was in that dilemma, having been notified by the Swiss officials, but still we kept on looking for solutions, and we were confident in these fields that we could at least do something. * * * We were especially thinking of the files of Chemie, Osmon, the corporations in which nobody else but Chemie had an interest." (Tr. Germ. 314).

He was sure "Dr. Sturzenegger himself would have been willing to hand us files" (Tr. Germ. 311); "it was evident that Dr. Sturzenegger would do his utmost to bring papers as he had done in the past". (Tr. Germ. 306-307). At their first discussion of the order for production of July 5, 1949, Dr. Sturzenegger had stated that "he would be willing on his side to do everything that he could". (Tr. Germ. 38-39; see also Tr. Germ. 157). They were especially thinking of the files of Chemie, Osmon, the corporations in which nobody else but Chemie had an interest (Tr. Germ.

[1] The order was dated June 15 but served June 21, 1950. (Tr. Germ. 311).

314) as to which there was no "strong adverse reaction from Dr. Sturzenegger". (Tr. Germ. 315). As to whether this would include Voorindu, Delft, Chimicom, International Kantoor, Germann stated:

2546 "I cannot put it that way because in every instance there might have been the possibility of dangers regarding to Article 273."[1]

After the seizure order was served, June 21, 1950, they felt that a partial production of papers would do no good. (Tr. Germ. 308-315).

As to production of records dealing with Interhandel or Osmon in the possession of Sturzenegger & Cie. Germann stated:

"We said that this would not add anything in a practical way to what we offered you in fact with our own files, because these files on the Sturzenegger side would reflect exactly the same transactions as you have seen in our papers. There would have been originals instead of carbon copies, or carbon copies instead of originals". (Tr. Germ. 309).

Germann stated they

"started thinking about possibilities of complying with parts, with something at least, but we didn't come to any practical results (Tr. Germ. 309). * * * and there started this reasoning about that it may even sound ridiculous to Judge Laws if we would send the twin file which you had seen, of what your had seen in our files. That could not be an excuse for our impossibility to comply with that part of the order if we were thinking of it in good faith." (Tr. Germ. 310).[2]

[1] Art. 273 prohibits economic espionage.

[2] It seems clear from Tr. Germ. p. 312-313 that this testimony refers to a time subsequent to the Swiss seizure order. Germann stated "these arguments that it would be ridiculous were made after we had the order which prohibited anything else". (Tr. Germ. 313). Also, "What I said about that, if I recall correctly, was always arguments after the order of the Federal Attorney was issued" (Tr. Germ. 312).

As to partial production of records, such as Rigidor's or Industriebank's, the witness stated:

> "But there we had the impression that this was so unimportant with the whole thing we were asking for that it would look even funny to Judge Laws if we would offer such a little thing. We were thinking for example, too, of the possibility to disclose these corporations' own records, but this did not come within the order of Judge Laws and would not have helped us". (Tr. Germ. 136).

Germann stated again:

> "I told you already that we just didn't deem it decent to offer the Court just the reproduction of our own files with the Sturzenegger firm because you had them already in our own papers". (Tr. Germ. 164-165).

As to the records of wholly owned companies held by Sturzenegger & Cie.:

> "We thought about these corporations, about their accounts with Sturzenegger, and about the importance of these accounts with Sturzenegger and there again we felt that the huge amount
>
> 2547 of documents [1] the order asked for would have made it ridiculous if we should have turned up with a few papers". (Tr. Germ. 185).

The matter of the partial production of the documents was discussed with their counsel, Dr. Wehrli, on many occasions after the Swiss seizure order was issued. (Tr. Germ. 321).

It is doubtful that the Government would have been satisfied with a partial production of the papers. Dr. Luthi's decision of June 25, 1951 states that the Swiss Government was prepared "to release individual documents proved to be indispensable for the suit". (Tr. July 5, 1951, 736). The Government pointed out this would be

[1] Some 700 jackets and 140 account books on the premises of I. G. Chemie and H. Sturzenegger & Cie. (Order of July 5, 1949).

quite unsatisfactory. (Tr. July 5, 1951; 676). The government stated:

> "The upshot of this document, which is internally inconsistent and inconsistent with prior acts and inconsistent with the note of January 1951, is that the Swiss Government will release paper by paper, you see, like somebody playing open poker, Your Honor. They will say 'no, we won't give you that one. We'll give you the next one. We won't give you the next three.' * * * They reserve the right to conceal any document they like without giving any reasons—which is like a public interest clause. And, in effect, they will set themselves up as judges of what we ought to have—something which Judge Laws purported to do and that he had jurisdiction to do when he made this order for discovery." (Tr. July 5, 1951, p. 676).

* * * *

2552 REASONS FOR NOT TAKING APPEAL:

As to the reasons why Sturzenegger & Cie. did not take an appeal from the seizure order, Germann stated:

2553 "There were several reasons. The first one was that we had learned from Minister Stucki that as well the superior of Mr. Luthi, namely, President von Steiger, and the head of the Political Department, Mr. Petitpierre, too, had acquiesced and endorsed the step taken by Mr. Luthi.[1] Now, the first appeal would have been to Mr. von Steiger and the second to the Federal Council as a whole body. The first step would be a mere show, because Mr. von Steiger, as we knew, already made up his mind. And as to the Federal Council, we knew definitely about the opinion of the two expert members of that body, and it was a practical impossibility to overthrow that decision, especially in view of the fact that the action

[1] Professor von Steiger, the Government's expert witness, stated that "if general police powers, which are exercised only very exceptionally, have to be exercised, it should usually come from the government. It's not very usual that a subordinate does it." (Tr. von St. 694-695). The context indicates he was referring to exercise of prevestive police powers by the Federal Council as distinguished from the Federal Attorney.

taken was legal in our view, and that there was no chance to overthrow it.

"The second part was within myself, the desire not to jeopardize the start and the running of the inspection of our documents, because I had seen the cautious attitude of Mr. Rebsamen and Mr. Schnyder in that respect when I put the problem up to them and got the permission and the assistance of Dr. Schnyder for the inspection in Basel." (Tr. Germ. 355-356).

It is admitted that no appeal to the courts of the seizure order was possible (Gov. br. p. 50) [2] and the only administrative review would be by Mr. von Steiger (Tr. Germ. 60) or the Federal Council on which Mr. von Steiger and Mr. Petitpierre sat. (Tr. St. 314-333, 606; Hug 512; St. Def. Ex. 35(6)). Dr. Wehrli, plaintiff's counsel, advised Germann and Sturzenegger that the seizure order was "legal in every respect" and that there was no prospect at all that an appeal would result favorably. (Tr. Germ. 60-61). Dr. Wehrli also advised Germann that plaintiff, as distinguished from Sturzenegger & Cie., had no right of appeal. (Tr. Germ. 60). The soundness of this advice is disputed by the Government, which offered expert testimony to the contrary. This will be considered later. (See present Report p. 63-71 [R. 2571-2579]).

Professor Hug, plaintiff's expert witness on Swiss law, testified that Sturzenegger & Cie. had no chance at all to reverse the seizure order

2554 by administrative appeal; that the seizure order was entirely valid under the preventive police power to avoid a violation of Article 273. Considering that it had already been approved or acquiesced in by Mr. von Steiger, head of the Department of Justice and Police, and Mr. Petitpierre, head of the Political Department, Professor

[2] Apparently a claim of cantonal or communal violation of the Federal Constitution is reviewable in the courts but a claim that *Federal* authorities are violating the Constitution is beyond the courts' jurisdiction. Of course the Federal action can be criticized in Parliament. (Tr. von St. 603-606, 609-610).

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Hug would have advised Sturzenegger & Cie., if consulted, as to an appeal during the 30-day appeal period, that there was no possibility of reversing the seizure order. (Tr. Hug 512-515). From his experience, he knew such orders were never issued by the Federal Attorney alone, but only after consultation with the head of his department, who alone could defend the order if asked in Parliament. (Tr. Hug 514-515). Professor von Steiger, the Government's expert, stated that Sturzenegger & Cie. should have appealed and had they done so it would have been successful. (Tr. von St. 513-514). Even if he knew of the Swiss note of January 10, 1951, he would still have recommended an appeal. (Tr. von St. 516-524).

It has also been seen that subsequent to June 21, 1950 when plaintiff found out about the order, it was concerned about the forthcoming inspection of plaintiff's own documents, as to which no final permission had been obtained. It will be recalled that this matter was under consideration by Dr. Rebsamen and Dr. Schnyder of the Political Department. Both these gentlemen thought the seizure order was valid. (Tr. Germ. 61-63, 324-326). Germann thought it inadvisable "for anyone in their group to hit our government in this very period, when the very touchy event of the arrival of the American officials in Switzerland" was imminent. (Tr. Germ. 61, 324-325, 355-356).

The problem of the production of the Sturzenegger & Cie. papers continued to be present in their minds during the period the American officials were engaged in inspecting plaintiff's papers and thereafter. (Tr. Germ. 75). It was the subject of continual discussion between Germann, Sturzenegger and Dr. Wehrli, their counsel. They tried again to find means to comply with the Court order. They had conferences with Dr. Iselin, President of plaintiff, who is a lawyer, and with Dr. Keller, an outstanding

2555 lawyer, a member of plaintiff's board of directors.

The subject matter was always the same, whether any of these people saw a possibility of finding a gap in

the legal situation. No one could find such a gap. (Tr. Germ. 75-76).

Germann discussed with Sturzenegger, Dr. Wehrli, Dr. Iselin and Dr. Keller the fact that the American officials had seen the plaintiff's and Osmon's papers. Dr. Wehrli and Dr. Iselin were of opinion that the bulk of material already seen by the American officials on their inspection trip, and the fact that they already had the Farben files and plaintiff's files reflecting their dealings with Sturzenegger & Cie. should convince them that the Sturzenegger files were not absolutely necessary. (Tr. Germ. 77-78). This feeling was not regarded in the light of a defense; they knew their obligation was to produce the documents. However, they hoped the American officials would be convinced by what plaintiff showed them, and the way they showed them, that plaintiff had done its utmost to comply with the Court's order and that the result of the inspection was a highly satisfactory one. (Tr. Germ. 78).

Subsequently to the filing of the Government's Motion to Dismiss in November 1950, there was a resumption of conferences with members of the Swiss Political Department. They had day to day contacts with Dr. Schnyder of that Department. Also, after they got the news, Dr. Iselin, Dr. Wehrli, Mr. Sturzenegger and Germann went to see Minister Stucki once more about the matter. (Tr. Germ. 79). About this time Germann saw Minister Stucki frequently about the Sturzenegger papers, and also about the return to plaintiff of its Norwegian property, which culminated in December 1950. (Tr. Germ. 80). Minister Stucki himself brought up the matter of the Government's Motion to Dismiss and was highly indignant at the manner in which the Government lawyers had attempted to smear the Swiss Government. The height of the Swiss indignation resulted from the newspaper publicity given the criticism. Minister Stucki stated the Swiss Government would not let the matter go by and a diplomatic note of

2556 protest followed.[1] (Tr. Germ. 81-82). His attitude became more rigid after the Motion to Dismiss was filed. (Tr. Germ. 321-322).

Also, after the Motion was filed, they went to see Mr. Petitpierre, head of the Political Department and President of Switzerland, (Tr. Germ. 131-132, 321-323) pursuant to an appointment made by Dr. Iselin. They disclosed to him the very serious situation resulting from the Motion to Dismiss. He said Minister Stucki had already told him about it. Mr. Petitpierre was very indignant at the American lawyers and said he would have his people make a protest. Germann and his associates then told him that they and their lawyer were still looking for a way to find a way out of their predicament. Mr. Petitpierre said he did not see a possibility of cancelling the order and that it was legal. However he said in a vague manner "Maybe we will find another way to do at least something to satisfy the American Court". (Tr. Germ. 322). Germann did not suggest that at least part of the Sturzenegger papers could be released with propriety. The spirit of the meeting made this impossible; the Swiss officials were very much upset and there was no use talking about a relaxation of the order at that time, particularly to Minister Stucki. (Tr. Germ. 323).

Questioned by the Master, Germann testified that Sturzenegger & Cie. were aware of the two applications to the Swiss Government dated April 2, 1951 and would join in them if plaintiff got a satisfactory reaction. (Tr. Germ. 379-380). There had been no exploration of shipping the Sturzenegger & Cie. records, or microfilms of them, to a neutral country for United States inspection[2] (Tr. Germ.

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[1] The protest was contained in the Swiss note of January 10, 1951. Germann testified he did not know of this note until after it was sent. (Tr. Germ. 81-82).

[2] Plaintiff's counsel at this point invited attention to the fact that Motions were made here to have that done. (Tr. Germ. 380).

380) insofar as the consent of Swiss Government was concerned. (Tr. Germ. 381). As to a possible law-suit
2557 by plaintiff against Sturzenegger & Cie. to get a court decision on the right to have that company's records shown to the United States officials, Germann discussed this with their counsel, Dr. Wehrli, and he said this would be possible with respect to plaintiff's account at Sturzenegger & Cie. but not with regard to the other papers. As to the affiliated companies, this too was discussed but Dr. Wehrli said that each of these companies would have to request the delivery of its documents. (Tr. Germ. 381-382). They also discussed the possibility of obtaining inspection of the documents by letters rogatory. Their counsel advised them a general inspection by means of letters rogatory was not feasible but that inspection of particular documents could be achieved in this way. His discussions with their counsel were with a view to a total release of documents, partial releases were secondary in their minds. (Tr. Germ. 384). Germiann did not think a private act of Parliament to permit the inspection was a possibility as it affected "a century-old basic principle of Swiss law". (Tr. Germ. 385).

In respect of affiliated companies not controlled by plaintiff, but in which it had some interest or influence, plaintiff was willing to exercise its influence to obtain a waiver to permit the production of their records. (Tr. Germ. 385-386).

* * *

2565 The Government also introduced in evidence a letter dated August 27, 1940 from Chemie to General Aniline & Film Co. enclosing certain documents "which in part were given us in friendly cooperation by the banking institution of H. Sturzenegger & Cie." (Tr. Germ. 364, Def. Ex. la, 405).

Once more, as to the production of papers of companies jointly owned by plaintiff and Sturzenegger & Cie., Germann stated that compared with the huge bulk of the

papers demanded, it would look ridiculous to turn up with a few papers; it would require a special application to the Swiss Government to release them and the Government had the bulk of them already. (Tr. Germ. 185-186).

Germann said that as to production of papers of AIG, General Aniline and Film Co. and their affiliated companies, in the hands of Sturzenegger & Cie., only the consent of plaintiff and defendant in the present case would be necessary and of the Federal Attorney. (Tr. Germ. 187). As to I. G. Farben files, he said nobody knows today who could consent. Even if the owner of the secret waived, it would require the consent of the Federal Attorney because the special permission under Article 271 had been given only as to plaintiff's documents. (Tr. Germ. 188-189).

On direct examination, Germann had testified that his American Counsel had advised him in the last six months of 1949 that settlement discussions had been had with Attorney General Clark and his successor, Mr. Howard McGrath, and the Alien Property Custodian, Mr. Bazelon, and later Mr. Baynton. There were real hopes of a settlement and the problem of the production of papers was not absolutely imminent. (Tr. Germ. 39-42). On crooss-examination, the Government brought out that he knew the litigation would not be allowed to slow down because of settlement talks and his American counsel so advised him. (Tr. Germ. 231-234).

Germann never presented to any Swiss official the thought that

2566 banking secrecy was not a matter for the Federal as distinguished from the cantonal government. (Tr. Germ. 353-354).

He did not consider getting the written opinion of a senior Swiss lawyer on the matter of producing the papers, either before or after the seizure order. (Tr. Germ. 363-364).

As part of the cross-examination of Germann, the Gov-

ernment summarized Exhibits 133 and 134 of the Sturzenegger deposition, a joint application of plaintiff and Sturzenegger & Cie. to the German Military Government, with numerous documents attached claiming ownership to Laenderbank stock. (Tr. Germ. 370). Some of the material gives information as to third persons, whose names were enumerated. (Tr. Germ. 370-373). The Government argues that in doing so "there was apparently no fear of illegality or prosecution, no confiscation of the records to prevent disclosure, and no prosecution for disclosure". (Gov. Reply Br. p. 19). The Government's argument was that if certain Sturzenegger records were made available to plaintiff on one occasion they could likewise be made available on another, later occasion. (Tr. July 12, 1951, p. 764-765.

POSSIBLE WAIVERS FROM COMPANIES CONTROLLED OR PARTIALLY CONTROLLED:

During cross-examination of Germann, the Government submitted a list of companies controlled or partially controlled by plaintiff. Mr. Sturzenegger in his deposition in the present case, the Government contends, specifically waived any privilege as to many of these companies. It has already been noted that plaintiff's position is that Sturzenegger's so-called "waivers" were really the result of legal duress under Judge Bailey's decision of January 10, 1950 that the Swiss secrecy laws conferred no privilege in an American Court. Also, the banker could not waive the clients privilege. (See present Report p. 54 [R. 2562] footnote 1): also Pl's. Brief, p. 7-8). Germann's statement has already been mentioned, that as to the companies wholly owned by plaintiff and Sturzenegger & Cie., they considered this factor but felt, considering the huge amount of documents the order required, that

2567 it would be ridiculous to turn up with only a few papers. Also, it would require a special application to the Swiss Government and the United States had the bulk of the papers already. (Tr. Germ. 185-186). Again,

Germann stated practically every transaction involves a third party who might want the secret kept. (Tr. Germ. 153).

As the question of whether waivers could have or should have been gotten by plaintiff, (Tr. Germ. 260) and whether they would have been effective will be considered later in the present Report, only a general description of the companies on the Government's list will be given at this point:

Category I:

Subsidiaries of plaintiff, such as Osmon, Partn, Voorindu, American I. G. and General Aniline & Film Co., Pickering & Co., Banque Federale, Delft, Chimicom, International Kantoor. The Government claimed waivers could also be obtained from the officers of these companies. (Tr. Germ. 261-263).

Category II:

Companies in which plaintiff has substantial investments, such as Chemanij and its subsidiaries, GMC Brussels, Defa, Agfa Photo, I. G. Dyestuffs, A. B. Arto. (Tr. Germ. 264-265). Other companies in which plaintiff had an interest were Norsk Hydro, Deutsche Laenderbank, I. G. Stickstoff, Chemische Fabrik Rohner, Newo and Samia, Winnica, the firm of Kuhlman, Agfa Photo, Zurich, Durand and Huguenin, (Tr. Germ. 267-269).

Category III:

Plaintiff and its officers and directors, Gatslow, Brumm, August & Walter Germann, Greutert, Sturzenegger himself, Iselin, Keller, Roesch, Thorman (Tr. Germ. 270-271).

Category IV:

Companies which are subsidiaries and participations of Sturzenegger & Cie., such as Axe Trading Co., Consolidated Dyestuff Corp., Dychem Trading Company, Chemo, Delta, Heydtkontor, Mapro and its subsidiaries and officers, Mithras, Norsk Staal, (Tr. Germ. 271-272), North American Industries, Synthetic Nitrogen Products, Tefiag, Trucidator Nominees, Theta. (Tr. Germ. 273, 274).

Category V:

Firms "in the circle" of plaintiff and Sturzenegger & Cie., such as Sopiadep, Rigidor, Perpetua, Industriebank, Visca, Providentia, Fiduziar A. G. and the individuals connected with them such as Auer, Cassani, Bischof, Mollwo, DuBois, Grieshaber, Haller, Schaer, Sidel-Steiner, Sutter, Werder, Wolfensperger, Furrer, Schaerer, Schudel. (Tr. Germ. 276-277).

2568 *Category VI:*

The consortia and secretariats on the books of Sturzenegger & Cie., such as the Elbe Konsortium, Grutchemie Konsortium, I. G. Konsortium, I. G. Secretariat, Igesol Konsortium, V. P. Konsortium, Visca Konsortium, the Hallux Konsortium and others. (Tr. Germ. 277-278).

Category VII:

Firms connected with I. G. Farben and with Sturzenegger & Cie., such as Teerfarben, H. Ahrens and Co., Athanil, Romanil, Budanil, Chemdyes, Bombay, Agfa Photo, Bombay, Bayer-Remedies, Bombay, N. V. Chemische Nitrojan, Sopi, Turana A. G., Teufa (Tr. Germ. 278-279).

Category VIII:

I. G. Farben, its subsidiaries and individuals connected with it, such as Ammoniakwerk Merseburg, Mr. Hermann Schmitz, managing director of Farben, von Weinberg, von Brenning, Dr. Warmbold, Duisberg, Bosch and others. (Tr. Germ. 279-280).

Category IX:

Miscellaneous, such as Bergens Privatbank, Christiana Bank, Nordag, Nordisk Lettmetall, Nordisk Aluminum, Norges Bank, Norsk Creditbank and their officials. In this category are included the large Swiss banks, such as the Credit Suisse, Swiss Banking Corporation, Elektrobank. (Tr. Germ. 280-281). Also the Metallgesellschaft Circle, including Metallgesellschaft itself, Montana Metall, Schweizerische Gesellschaft fur Metallwerke, Rotopulsor, Mr. Traudes, Mr. Alfred Merton, Mr. Rudolf Euler. (Tr. Germ. 282).

As to testimony by Sturzenegger relative to the various companies and persons above enumerated, and the Government claim that such testimony amounted to a "waiver" of the Swiss secrecy laws, the attention of the Government was drawn to the fact that Sturzenegger was examined as a witness speaking for plaintiff and not for Sturzenegger & Cie. Hence the question was posed how Sturzenegger as a banker, (as a partner in his own firm) could be deemed by his testimony to have waived his own clients privilege of secrecy under Swiss law. (Tr. Germ. 283). The Government's response was that the question had been raised by plaintiff's counsel before Judge Bailey as to whether Mr. Sturzenegger was compelled to answer questions relating to his own firm as distinguished from plaintiff. Judge Bailey ruled that he did. (Tr. Germ. 284-292). Plaintiff however contended that the end-result, that Sturzenegger answered the questions relating to his own firm

2569 and its clients, was in no sense a waiver of Swiss secrecy laws but simply testimony before an American Court pursuant to that Court's order overruling a claim of privilege. (Tr. Germ. 290-291). It had therefore, plaintiff contended, "nothing to do with the question of the impact of the Swiss law upon a Swiss citizen in Switzerland." (Tr. Germ. 291).[1]

Government counsel likewise argued that formal waivers from the above companies could have been procured and that plaintiff never asked Sturzenegger & Cie., or itself tried to obtain such formal waivers (Tr. Germ. 293-298) though it contended Sturzenegger's testimony already amounted to a specific waiver (Tr. Germ. 298-301).

* * *

[1] The Government also claimed in argument that Sturzenegger in his deposition waived his clients rights of secrecy, if any, and that his firm's failure to obtain waivers, or plaintiff's failure, under these circumstances, bore on good faith. (Tr. Oct. 15, 1951, p. 10-12). It would seem, however, that Sturzenegger's personal conduct in an American court is of little or no evidentiary value to show *plaintiff's* good faith. While Sturzenegger testified as an officer of Chemie, any waiver of Sturzenegger & Cie's clients' secrets was obviously his own personal responsibility and cannot be imputed to plaintiff.

As to whether plaintiff, as distinguished from Sturzenegger & Cie. had a right of appeal, plaintiff's expert Professor Hug, stated the answer was very doubtful. (Tr. Hug 507-509, 512, 536). Usually only those persons directly affected by an administrative order have the right of appeal. Article 103 (von St. Ex. 35, p. 1) provides that as to court appeals, an appeal may be taken by the one who is a party to the decision or by a person whose rights have been violated by the decision. If such a rule applies to the present case, plaintiff would have no right of appeal (Tr. Hug 507-508). As to administrative appeals, to the head of the Department of Justice, and later to the Federal Council, there is no statement in the law (Articles 124-132) as to who is qualified to take an administrative appeal. However, the Federal Council has applied the rule of Article 103 (dealing with court appeals), namely that those persons whose rights are directly involved, or by extension those whose legal interests are affected are qualified to appeal.[1] Thus, where a decision involved a dentist or doctor, his professional association might appeal, though in recent times the tendency seems to have been to restrict the circle of those qualified. In the last volume of Decisions of the Federal Council published in 1941, decision No. 113, Vol. 15, p. 198, there was a decision in a case involving a permit to erect a high-tension line. There was an appeal by certain communities involved but a Swiss society for the protection of natural beauty was denied the right of appeal as not legally affected by the order. (Tr. Hug 510-511). The witness admitted there was no case similar to the

[1] There is no showing the seizure of the Sturzenegger papers violated any of plaintiff's purely legal rights under Swiss law. The papers were Sturzenegger & Cie's. property and there is no proof or even argument that Sturzenegger & Cie. was under a legal obligation to plaintiff under Swiss law either to produce the papers or to safeguard them for possible production. This Court's holding of *prima facie* control for discovery purposes does not appear to have a bearing on legal rights *inter sese* in Switzerland.

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present; if consulted by plaintiff as to its status, i.e., right to take

2572. an appeal, he would advise it to take the appeal but on the basis of the case last cited it might be rejected on the ground it had no formal qualifications to appeal.[1] (Tr. Hug 511-512, 536). As to the merits, the witness felt that, as in the case of an appeal by Sturzenegger & Cie. there was no chance of plaintiff winning the appeal if the seizure order had been approved in advance by the head of the Department of Justice and Police, Mr. von Steiger, and the head of the Political Department, Mr. Petitpierre. From his activity during the war, the witness knew that orders like these were never issued by the Federal Attorney without consultation with the head of his department who could alone defend them if questioned by Parliament. (Tr. Hug 513-514)

In contrast, Professor von Steiger, the Government's expert,[2]

[1] This testimony, at Tr. Hug 511-512 is construed by the Government to mean that Prof. Hug would have advised plaintiff to take an appeal. (Gov. br. p. 51, Gov. Reply br. p. 12; see also Pl. Reply br. p. 35, footnote). The language is vague but on the whole seems to have the meaning that the right of appeal by plaintiff being very doubtful (Tr. Hug 507, 536) the only way to test out plaintiff's status for appeal purposes would be to take one. On the merits, Professor Hug was certain plaintiff would have no chance. (Tr. Hug 513-515).

[2] Professor Werner von Steiger was qualified as follows: born in Switzerland 1897; member of the bar, Switzerland since 1923; assistant professor 1938; associate professor 1943; full professor of law March 1951, University of Berne. (Tr. von St. 3-4). Educated at the University of Berne, University of Geneva and at the Middle Temple, London. Engaged in a general practice as a young lawyer but in the last five years had matters involving company law, clearing law (with the Swiss Compensation Office) both of a penal character and otherwise (Tr. von St. 5-6). He has furnished legal opinions on clearing law, company matters, conflict of laws and international law. He has published articles and small books on company law and conflict of laws and is presently publishing an annotated text book on limited companies. He made a report to the Swiss bar Association at its annual meeting on holding companies, which the association published. (Tr. von St. 7-9). He also published a work on sales in international law. At the university he taught commercial law, including company law, the general part of commercial law, securities, bills of exchange, conflict of laws and bankruptcy. He

2573 testified that the seizure order was illegal (Tr. von St. 304, 306, 314-315) and that both Sturzenegger & Cie. (Tr. von St. 267-268, 314-315, 320-321, 328, 707-710,[1] 761) and plaintiff had a right of appeal (Tr. von St. 321-324, 328, 710-711, 761) and that the appeal would have had a good chance of success (Tr. von St. 513-524) even though the seizure order had later been approved by the Federal Council. (Tr. von St. 514-521).[2] The United States Government had the right of appeal as an interested party. (Tr. von St. 759-768). Even the American judge who signed the order to produce had the right of appeal, as in the case of administrative appeals the law looks on the question of legitimation (standing to appeal) in a broad way. (Tr. von St. 783-786). They are not difficult about the matter. (Tr. von St. 786). He stated that Sturzenegger & Cie. as the addressee of the seizure order had the right of appeal. (Tr. von St. 320-321). In his opinion, plaintiff also had the right of appeal because the order was of legal concern to plaintiff. (Tr. von St. 318-321). He stated the Organization Act says nothing about who can take an appeal, but it is generally held in the literature,

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holds the degree of Doctor of Laws and is an officer (Colonel) in the Swiss Army, on the general staff. (Tr. von St. 9-10). He has been a member of the Board of Directors of the Swiss Bar Association for five years and was President of the Swiss Association for International Law from 1938 until the end of 1950. (Tr. von St. 11-12). The latter publishes the Swiss Yearbook of International Law, of which he was editor. In 1942 he was the delegate of the Swiss Government for the exchange of Japanese and allied diplomats, newspapermen, bankers, etc. He is a member of an expert committee for the Federal Government on certain legislative matters and has acted as attorney for the cantonal government. (Tr. von St. 12-16). He is chairman of the board of the Banque Populaire Suisse, the fourth largest bank of Switzerland. He is also President of Chocolat Suisse, the Association of Swiss chocolat manufacturers. (Tr. von St. 16-18).

[1] The witness admitted Sturzenegger et Cie. was not under a duty to its clients, under Swiss law, to appeal the seizure. (Tr. von St. 708-709).

[2] Professor von Steiger said the Swiss note of January 10, 1951 was an opinion, not a decision (Tr. von St. 517) and that the Federal Council, when presented with the full case and the pertinent arguments on appeal, would allow the appeal. (Tr. von St. 519-521).

and it has been confirmed by the authorities, by the Federal Council itself, that anyone who has a legal interest can take an appeal; Birchmeier so holds and in a recent case the Federal Council held that a professional association could appeal from a decision allowing a foreigner to practice dentistry. (Tr. von St. 319-320). The appeal would be to the head of the Department of Justice and Police. (Tr. von St. 321). Professor von Steiger stated that if the order prevented plaintiff producing the papers, then it was of legal interest or concern to plaintiff; that in administrative appeals of this sort, appeals are hardly ever dismissed for lack of standing to appeal, lack of legitimate interest,

2574 i.e. that the party is not formally entitled to appeal; "they use that if they think the man has absolutely no business in court". (Tr. von St. 323-324). Although the witness testified to the "legal" interest of plaintiff, apparently what he meant was that plaintiff had a personal legitimate interest "rather than what you might call technical standing to sue in our [1] terminology". (Tr. von St. 325-326). An objectionable decision can also, he said, be informally brought to the attention of the superior authority, even after the 30-day appeal period has elapsed.[2] However, this appears to be a sort of informal appeal which brings the matter to his attention but the appealing party has no formal rights, though the official must go into the facts. He testified that administrative decisions can also be reached by requests for reconsideration and this gives a new right of appeal[3] (Tr. von St. 326-329) and that Dr. Wehrli's letter of April 2, 1950 (Tr. Apr. 11, 1951, p. 8)

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[1] In American terminology.

[2] The Federal Department of Justice and Police in its decision dated September 6, 1951 held that a formal appeal, at least, must be taken within the 30-day period, unless the appellant is prevented from appealing by something not due to his own fault. (Tr. Oct. 15, 1951, p. 71).

[3] The Swiss decision of September 6, 1951 seems contrary to this view. (See Tr. Oct. 15, 1951, p. 72).

is a request to reconsider (Tr. von St. 329-331). He stated that if the head of the Department of Justice and Police rejects the appeal there is a further appeal to the Federal Council; there is no later court review. (Tr. von St. 332-333).

The witness testified from Birchmeier, Manual of the Federal Law, Article 130 (von St. Ex. 35(6) p. 2) that the person wishing to appeal, other than the addressee of the order, must be a person legally affected, i.e. he must have a legal interest. (Tr. von St. 356-358).[1] It has already been noted that plaintiff's counsel, Dr. Wehrli, had advised it that plaintiff had no right of appeal. (Tr. Germ. 60, 355-357).

2575 Both parties rely upon the decision of the Federal Council in the high-tension wire case (Fed. Admin. Dec. Vol. 15, No. 113, p. 198, Hug Ex. 10), the plaintiff for the statement that the right of appeal is limited to those "whose individual rights or legitimate interests have been directly affected by an order"; the Government claims the question of who could appeal was left undecided (Tr. July 5, 1951, 685). However, the Government claims that as to the two associations for the preservation of natural beauty, one Federal, the other local, the inference is that *if* the question of who could appeal must be decided, the local association would be a party in interest with the right of appeal (Gov. br. p. 51; see Pl. br. p. 52; Pl. Reply br. p. 25). The case is not conclusive either way; the quotation relied on by plaintiff undoubtedly appears in the decision,[2] but the decision expressly left un-

[1] At p. 492 of Birchmeier a footnote to Article 130 states:

"An express provision determining what persons have the right of appeal is lacking. The Federal Council demands for the right of appeal that the person is legally affected. It also recognizes the right of the professional or trade association". (von St. Ex. 35(6) p. 2. footnote).

[2] The decision also states:

"Capable to appeal are only persons who are disadvantageously affected by the order under appeal, and not any third person whatsoever". (Hug Ex. 10, p. 3).

decided whether either association had the right of appeal, as the Government pointed out in argument. (Tr. July 5, 1951, p. 685). It must be remembered in evaluating Swiss cases that the Swiss legal system is not founded on precedent; the deciding authority reads the decision and sees what can be made of it but is not bound by it. (Tr. von St. 177-180). Plaintiff cites (Pl. br. p. 50-51) Ruck and Fleiner-Giacometti as authorities that only one whose legal rights are directly affected may appeal. These citations are objected to by the Government on the ground they were not testified to by the witness (Gov. Reply br. p. 2, 12) and in any event refer to appeals to Administrative tribunals. (Gov. Reply br. p. 12). Their use is defended by plaintiff. (Pl. Response p. 1-2, footnotes). They appear inadmissible, foreign law being provable by a witness, the authorities being secondary and incompetent standing by themselves. Wigmore on Evidence, Sec. 1271). Also, permitting their use for the first time in briefs would obviously deprive the Government of its right of cross-examination.

2576 The evidence, on the whole, makes it very doubtful whether plaintiff, as distinguished from Sturzenegger & Cie., had a right of appeal. The authorities seem to require a legal interest and, as already noted, the Swiss Government invaded no legal right of plaintiff when it seized another company's property.[1] The Swiss Federal Council appears to take the matter seriously and to regard it in a technical way as its discussion in the high-tension wire case illustrates (Hug Ex. 10, p. 2-3). Also, the decision of June 25, 1951 refusing to modify the seizure order (Tr. July 5, 1951, Ex. 2(a), p. 735) states that:

[1] Plaintiff points out that in any event, if plaintiff had a right of appeal, as being affected by the seizure order, defendant likewise had a right of appeal as similarly affected. (Pl's. br. p. 53; Tr. von St. 764-768). This is also emphasized in the Intervenor's brief p. 2-5. The argument appears to the Master to be outside the order or reference, which is limited to plaintiff's efforts in good faith to obey an order of this Court; the Government's action or inaction has obviously no bearing on this question.

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"It is doubtful a priori whether Interhandel is entitled in any way to file the present application and whether it could not be made solely by the banking firm H. Sturzenegger & Co." [1]

Discussion of Plaintiff's Efforts:

It seems clear from what has already been recited that the project of inspecting the Sturzenegger papers as such did not get into the case until January 18, 1949 and that the permission of the Swiss Government contained in its letter to plaintiff of November 25, 1948 and its note of November 29, 1948 had no reference to such a program. As already noted, the Swiss Government at no time waived its laws, still less its Constitution at plaintiff's behest; the limited permission it gave was authorized by Article 271 of the Swiss Code. It did not therefore blow hot and cold when it seized the Sturzenegger papers June 15, 1950 and there is no atmosphere of collusion in which plaintiff's efforts must be tested. Plaintiff, familiar as it was with the Swiss Compensation Office reports, which were replete with references to Sturzenegger & Cie. must have
2577 realized at an early date that the Government would desire to inspect those papers. Yet the first mention of use of papers, and in Switzerland, came from plaintiff. If the Sturzenegger papers were inimical to plaintiff, as the Government contends, it does not make sense that plaintiff should make, so early, so dangerous a suggestion. Thereafter, the problem of the production of the Sturzenegger papers seems to have arisen naturally as time went on, like most human problems; it does not have the air of design or contrivance, leading up to the final climax of the seizure. The truth seems to be as Germann suggested, that plaintiff always thought the papers would be produced, or some of them, without giving much thought to Swiss

[1] The appeal from that decision was apparently taken by both plaintiff and Sturzenegger & Cie. See Decision of September 5, 1951 denying the appeal. (Tr. Oct. 15, 1951, p. 59).

law, in much the same way that Sturzenegger assisted in giving plaintiff the documents to support its Administrative Claim before the United States Government, or its Laenderbank claim against the German Government.[1] One thing is clear: there is no evidence whatsoever that either Sturzenegger personally, or his company was in any way reluctant to produce the papers herein involved. Their stake in plaintiff may be the common-sense reason.

The time had not yet arrived for the production of the papers when they were seized June 15, 1950. Hence plaintiff has never voluntarily been in default. However, as early as January, 1950, its witness, Sturzenegger, intimated frankly his doubt as to his firm's ability to comply with the order of production and this led to the Government's Motion of January 5, 1950 to have the documents produced here, and the plaintiff's Motion to be absolved from their production at all. As already seen, this resulted in this Court's order denying both motions, stating it would await developments from the Government's trip to Switzerland to inspect *plaintiff's* documents. Sturzenegger personally was in court on April 18, 1950 and heard this Court's ruling and its intimation of possible sanctions. At the end of April he returned to Switzerland and immediately had several conferences with Germann,

2578 plaintiff's managing director, and its attorney, Dr. Wehrli. He told them of his apprehensions, resulting from what he had seen and heard in court. All agreed that the best chance was to see the proper Swiss official (Dr. Luthi) and ascertain if there was not some way to comply. Dr. Lüthi found no such way and ended the conference with a definite warning that any disclosure would be their own responsibility. Dr. Wehrli, their counsel, advised them that the Swiss Federal Attorney's decision was valid under Swiss law.

[1] It does not appear that giving plaintiff this information would violate any Swiss laws; plaintiff was the client and entitled to it.

Following this, Germann discussed with Sturzenegger whether there could not be a partial production of the papers but this seemed no solution because it was not in accordance with this Court's order which called for the entire files of Sturzenegger & Cie. and they feared a bad impression might be produced. Also, during the months prior to the seizure, they discussed possible production of Sturzenegger & Cie. papers relating to companies wholly owned, or controlled by plaintiff, or affiliated with it. They were discussing these possibilities when the seizure order came out of a clear sky.

* * * * *

2580 THE RIGHT TO SEIZE THE PAPERS UNDER SWISS LAW; OUTLINE OF OPPOSING CONTENTIONS:

Plaintiff contends that the Swiss seizure order was an exercise of the preventive police power stemming from Article 102 of the Federal Constitution.[1] The order itself states that production of the papers would constitute economic espionage in violation of Article 273 of the Penal Code and would violate Article 47 of the Swiss banking law relative to maintenance of bank secrecy. The seizure was made to prevent the commission of these offenses. (See text of Order, p. 2 present Report [R. 2510]). The plaintiff contends the seizure was valid under both the above laws and also to prevent a violation of Article 271 of the Penal Code denouncing any action on Swiss territory, without authorization, on behalf of a

2581 foreign state, which action would be within the province of a Swiss governmental agency or official.

The Government contends there is no preventive police power under Swiss law except in respect of a disturbance of the peace; that Article 273 applies only to business secrets which the owner has a legitimate desire to protect

[1] Professor von Steiger admitted the power was traceable to Article 102 but made clear it applied only to cases of public peace and order. (Tr. von St. 719).

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and which his waiver would release; that Article 47 relative to banking secrecy is a personal right of the customer, waivable by him, and in any event is not a matter enforceable by the Federal but by the Cantonal authorities. As to Article 271 prohibiting acts (without authority) for a foreign government on Swiss territory, the Government contends this reference in the Swiss note of January 10, 1951 is an afterthought; in any event the Swiss Government gave the permission by its action in November 1948.

EXISTENCE OF PREVENTIVE POLICE POWER:

As already seen, the Swiss Federal Attorney's order of June 15, 1950 states the seizure is made to prevent violations of Article 273 of the Penal Code (economic espionage) and Article 47 of the Swiss Banking Act (bank secrecy). (Present Report p. 125-132). If, as the Government contends (Gov. br. p. 20-26; Gov. Reply br. p. 2-3), the Swiss Federal Government has no preventive police powers at all, the question whether production of the papers would violate the above statutes, or any other statute, would be unimportant. The first question is, therefore: is there a Federal preventive police power and does it cover the Sturzenegger situation?

SWISS GOVERNMENT'S STATEMENTS:

The Swiss Government has on five different occasions affirmed the existence of the preventive police power and its pertinency to the present case:

1. In the seizure order itself. (Present Report p. 2 [R. 2510]).

2. In the Swiss diplomatic note of January 10, 1951. (Tr. Hug p. 651, 656-657, Ex. 4).

3. In the decision of the Swiss Department of Justice and Police

2582 dated June 25, 1951 refusing to permit Dr. Luthi, the Swiss Federal Attorney, to testify in the present case "to defend the lawfulness of his order". (Tr. July 5, 1951, p. 729-732).

4. In the decision of the same Department dated June 25, 1951 refusing to modify the seizure order. (Tr. July 5, 1951, p. 734-737, Ex. 2(a)).

5. In the decision of the Swiss Department of Justice and Police dated September 6, 1951 (Tr. Oct. 15, 1951, p. 69-73) denying the appeal from the latter.

The seizure order, as already seen, states that productions of the papers would violate Article 273 of the Penal Code and Article 47 of the Banking Law "which offenses the Federal Authorities have to prevent in order to maintain the public security and order *on the basis of their preventive/police power*" (Present Report p. 3 [R. 2511], italics supplied).

The Swiss diplomatic note of January 10, 1951 (Tr. Hug p. 651, 657, Ex. 4), after referring to imminent violation of Article 47 of the Banking Law, states:

> "The federal attorney, whose powers and duties are not limited to the prosecution of crimes committed but *extend also to the prevention of imminent illegal*[1] *acts* was therefore compelled to take the action which seemed necessary under the circumstances and which led to the order of June 15, 1951." (Italics added).

The decision of the Swiss Federal Department of Justice and Police dated June 25, 1951 denying Dr. Luthi as a witness states the authority to confiscate exists under Article 65 and 73 of the Federal Law[2] "which serves to secure evidence and prevent the violation of further laws", and continues:

> "However, it is also lawful from the point of view of preventive police power, to look after the maintenance of the public security and order is an elementary and primary duty of the state which has always been vested in the supreme authorities of the govern-

[1] It should be noted the note refers to "illegal" as distinguished from criminal acts.

[2] No testimony was taken on this independent ground for the validity of the seizure order.

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ment by virtue of common law, this without legal foundation (Muller H.: Ueber Praventivpolizei,
2583 Zch. Diss. 1937; P. 91; also BGE 60, I, 121/122 and BGE 63, I, 213). The special character of the crime *against the state* requires to a great extent preventive police measures. It is not only a matter of prosecuting crimes which have been committed (repressive) but of hindering them (preventive). The preventive activity becomes repressive activity when it is suspected that a punishable offense is already under way. On the basis of its responsibility to preserve the national security, the Office of the Swiss Federal Attorney makes use of preventive police measures, i.e. the proper means corresponding to the circumstances which are directed against the disturbers creating the danger. (BGE 60, I, 124 F)."

The decision of the Department of Justice and Police of June 25, 1951 refusing any modification of the seizure order defends the seizure order, pointing out that the fact of the desired inspection is precisely the reason for the seizure. (Tr. July 5, 1951, p. 734-735, Ex. 2(a)).

The decision of the same Department dated September 5, 1951 denying the appeal from the last named decision states:

> "When it issued its order of the 25th June, 1951 * * * the Department examined and endorsed the legality of the confiscation. *We refer to the considerations contained in that Order.*" (Tr. Oct. 15, 1951, p. 72, italics added).

Are these representations by the Swiss Government of evidentiary value? Two extremes must be avoided. On the one hand, they cannot be disregarded *in toto* on the theory the Swiss Government was in collusion with plaintiff; this is precisely the focus of inquiry. On the other hand, they cannot be given the finality of acts of state because this Court's opinion of February 15, 1951 orders inquiry into the legal validity of the seizure order. The true rule appears to lie somewhere in between the two extremes. If it were shown that the seizure order was

grossly illegal, that it was mere fraud or pretense, the Swiss protestations of its legality could possibly be ignored. But if the matter is a debatable one, if nice questions of Swiss law may be resolved one way or the other, by one expert or the other, then it would seem that the Swiss Government's declarations of its powers and duties are entitled to great weight. No doubt a Swiss lawyer is entitled to differ with his own government as to a matter of Swiss law but his argument must be convincing to persuade us that his government was wrong in construing that law. And so the repeated assertion by the Swiss Government that it

2584 possesses preventive police powers and that they were properly applicable herein must be overturned, if at all, by convincing evidence to the contrary.

* * * *

2631 . . . The question of waivers is somewhat academic in the present case as it seems clear that although Sturzenegger & Cie were owners of the papers, there were multiple owners [1] of the so-called secrets contained in the 450 dossiers, the 110 account books and the 55,500 files of the Sturzenegger Company examined by the Swiss Compensation Office in 1945-1946, to say nothing of papers of affiliated companies and other possible papers.[2] (Gov. Mot.

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[1] The evidence is that *all* owners of the secret would have to waive. (Hug 574-575, 636-637, 646-657; Dandliker decision, von St. Ex. 15; cf. tr. von St. 530, 671-673). The Swiss Government takes this view in its letter of June 25, 1951 (Tr. July 5, 1951, pp. 736-737) quoted later at p. 129 present Report. However, the Government expert testified the state could not be one of the owners. (Tr. von St. 692-693).

[2] The thought may occur (see Gov. Reply tr. p. 18; Pl. Response p. 17) that as the Sturzenegger & Cie. papers were examined by the S. C. O. in 1945-1946 they were no longer "secret" within the meaning of Art. 273, particularly as the S. C. O. report was communicated to the United States Government. Indeed, it is before this Court as Exhibits A, B, C and D to the Government's Motion to Produce filed January 18, 1949. However, under the Washington Accord (14 State Dept. Bulletin, pp. 1101, 1121-1124), the S. C. O. report is restricted to diplomatic or at least governmental channels. Also, there is nothing to show the S. C. O. report reveals the Sturzenegger

to Produce of Jan. 18, 1949, affd. p. 3). The enumeration by categories of companies controlled by plaintiff, or affiliated with it (Pres. Report p. 59 [R. 2567-8]) shows the complexity of the problem, both under Article 273 and Article 47 (bank secrecy).

2632 It appears from the above that there is a legal basis in the evidence for the seizure on the ground of a probable violation of Article 273. The chief difference between the experts was that the Government expert stated that private waivers would take the papers outside the

2633 scope of Article 273, whereas plaintiff's expert held that private waivers, even by all parties, would be ineffective in the face of a public interest. It would appear that the latter is the better legal view, otherwise a state policy would be at the entire mercy of the individual; carried to its logical extreme there could never be a violation of Article 273 if the sole owner of the secret chose to reveal it to a foreign official or have someone else do so. In any event the evidence shows the Swiss Government's attitude is a legally permissible one under Swiss law. And, as already discussed in connection with the Swiss note of January 10, 1951 and Article 271, a foreign government's construction of its own laws is entitled to great weight.

2637 Conclusions as to Article 47 (Bank Secrecy):

As the Government remarks in its main brief (p. 4), the testimony in regard to Article 47 is largely undisputed ex-

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records in their totality. The papers not pertaining to Chemie or its affiliates would necessarily come under foreign scrutiny during an inspection en masse.

The investigation of Chemie's and Sturzenegger & Cie.'s affairs was seemingly an exception to Article 273 by reason of later defense statutes and the Washington Accord. (See tr. Hug 641). The Swiss note of January 10, 1951 refers to its investigation of Chemie under the Washington Accord (Hug Ex. 4, p. 652) and gives this as one of its reasons for relaxing Article 271 as to plaintiff's papers. (Hug Ex. 4, p. 655).

cept in respect of the applicability of Sec. 344 of the Penal Code. This section authorized the Federal Council, on motion of the Swiss Federal Attorney, to permit Federal prosecution of an offense at once cantonal and federal

2638 in character. The Government, following its expert, (Tr. von St. 470, 479) points out that Article 344 presupposes (a) an offense already committed, (b) a motion by the Swiss Federal Attorney and (c) an order of the Swiss Federal Council, none of which have occurred. It states Article 344 is no authority at all for preventive police action, the existence of which it has all along denied anyhow. (Gov. br. p. 8-9; Gov. Reply br. p. 11; as to preventive police power see Gov. br. p. 20-26; Gov. Reply br. p. 2-3). Plaintiff replies (Pl. br. p. 40) that under the circumstances the imminent violation of Article 47 would be an offense which the Federal Attorney could reasonably expect he would be authorized to prosecute; hence he could take preventive action in advance. Professor Hug, the plaintiff's expert, supports plaintiff's position. (Tr. Hug 459-461).

The Government appears to be correct in its position that the present case does not, technically, come within the provisions of Article 344; there is, as it states, no offense, no motion, no order. However, if the preventive police power exists, and the Master has taken this view, the seizure fits into the general policy of Sec. 344; the Federal Government is preventing the commission of an offense it might later have to prosecute.

Also, as in the case of the preventive police power, and Article 273, the Swiss Government in the seizure order itself, in its diplomatic note of January 10, 1951 and in its decision of June 25, 1951 has affirmed, in so many words, the applicability of Article 47. As before noted, these are constructions by the Swiss Government of its powers; while in no sense conclusive, they are entitled to great weight.

As to a solution by waivers, the Swiss letter of June 25,

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1951 indicates that *all* parties to banking transactions must waive bank secrecy, which excludes any general waiver by the customer (depositor) alone. Once more, this statement is not entitled to finality; however, it supports plaintiff's contentions and its expert's testimony. If all parties
2639 to the myriad Chemie-Sturzenegger transactions[1] must waive in order to avoid violating Swiss law, it seems clear that as a practical matter waivers alone could not solve the present problem.

Also, this Court's order for production of the Sturzenegger papers is based upon a holding of *prima facie* control by plaintiff, under Rule 34 FRCP. But the evidence as to Article 47, even on the Government's waiver theory, shows there must be an act by a third party, the customer. The categories of companies listed by the Government (Present Report p. 59 [R. 2567]) show comparatively few are controlled by plaintiff.

The Government's argument (Gov. br. p. 33-36) appears to push this Court's holding of *prima facie* control too far. If the intervention of a third party, an independent agent, is necessary to produce the papers, then by definition plaintiff has no control over their production. But aside from this the testimony of Germann, plaintiff's managing director shows that plaintiff considered seriously the production of records in Sturzenegger & Cie's possession relating to controlled companies or affiliates but concluded such partial production would not meet this Court's order. (See present Report p. 36 [R. 2544]). Also, there was the difficulty of Article 273 and Article 47 (Tr. Germ. 158-160; 314). Finally, even assuming waivers might be good under Article 273 and Article 47, they would be totally ineffective to avoid the interdiction of Article 271, prohibiting acts by foreign officials on Swiss soil unless specifically authorized by the Swiss Government. The firmness of the Swiss refusal of June 25, 1951 *after* waivers (see present Report p. 129 [R. 2637]), shows the unlikelihood of the Swiss

[1] The extent of these transactions is indicated in the S. C. O. Reports Ex's. A, B & C to the Government's Motion of January 18, 1949.

Government's overlooking a day by day inspection of the Sturzenegger papers by the American officials.

2640 It would appear that Article 47 (bank secrecy) as well as Article 273 (economic espionage) forms a legal basis under Swiss law, and from the Swiss viewpoint, for the seizure order.

PLAINTIFF'S PAST EFFORTS AND PRESENT EFFORTS:

Under the above heading the Government contrasts plaintiff's successful efforts in times past to produce papers "where the objective was of advantage to them" with its efforts in the present matter. (Gov. Reply br. p. 16-26). From this the Government argues that Chemie and Sturzenegger & Cie. did not sincerely desire a disclosure of the papers in the present instance. Also, from these facts, the Government infers collusion between plaintiff and the Swiss Government.

The present Report (p. 68 [R. 2576]) has already considered the improbability that plaintiff would actually conspire with the Swiss Government to have the latter seize the Sturzenegger papers. There is no evidence at all pointing to any such program[1] but even in the realm of conjecture it does not make sense that plaintiff, with only one chance to get back its claimed assets (by the present lawsuit), would risk dismissal of that suit by non-production of the Sturzenegger papers no matter what the Sturzenegger papers contain. Considerations of this sort eliminate alike theories of neglect, inaction, conspiracy with the Swiss Government, or provocation of that government. It is not as if the Sturzenegger papers were an unknown quantity to the United States; the nature of these papers in considerable detail is indicated in the Swiss Compensation Office

[1] The Intervenor points this out in its brief:

"There is not one scintilla of evidence, in the voluminous record of the proceeding before the Master to indicate that either Interhandel or Mr. Sturzenegger, its director and the managing partner of Sturzenegger & Cie., took any action which resulted in the Swiss Federal Attorney's order impounding the bank's papers and records." (Intervenor's brief, p. 4).

2641 Reports (Ex's. A, B & C to Def's. Mot. of January 18, 1949);[1] the counterpart of many letters in the Sturzenegger files has already been seen by the Government in plaintiff's files;[2] lastly as to possible Farben connections, Farben's files are in the hands of the Government. It is not a complete answer for the Government to say that having the knowledge is one thing, having the proof is another, i.e., that it must have the evidence to show enemy taint, which evidence it thinks would be found in the Sturzenegger files. But the seizure of the latter's files will no doubt permit proof of many facts by secondary evidence and it must be assumed plaintiff is aware of this rule. Attributing the blackest of motives to plaintiff, it cannot be supposed that intelligent businessmen would embark on a difficult and dangerous conspiracy where the net result, on this hypothesis, would be that it has merely succeeded in down-grading standards of proof; it has in no way entirely destroyed the capacity of the Government, by secondary evidence, to resort to the Sturzenegger papers for support of its defense. Only a reading of the S. C. O. Reports (Ex's. A, B and C, Gov. Mot. Jan. 18, 1949) can give an idea of the immense amount of information already known to the Government about the Sturzenegger papers.

Lastly, plaintiff knew that the United States, at a time when it could have obtained further information as to the Sturzenegger papers and possibly access to them, did not choose to pursue the matter. This is referred to in the Swiss note of January 10, 1951 (Tr. Hug Ex. 4, p. 652-653) showing that the United States failed to take an appeal from the Authority of Review which reviewed the

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[1] See colloquy with Government counsel, Tr. Oct. 15, 1951 p. 20-21, as to the Government's knowledge of the S. C. O. Reports.

[2] Thus an original letter from Chemie to Sturzenegger & Cie. would be in the latter's files but the carbon would be in Chemie's and vice versa. Further, bookkeeping entries would appear in both sets of books.

Swiss Compensation Office's decision of September 24, 1947 under the Washington Accord, which
2642 unblocked plaintiff.[1] (See also S. C. O. Report of September 24, 1947, Ex. A. Gov. Mot. Jan. 18, 1949, pp. 1-7).

The United States was thus well aware, at the time, of the role of Sturzenegger & Cie. in the Chemie picture which was recited in detail in that report and other S. C. O. Reports. (Ex. A, B & C, Gov. Mot. Jan. 18, 1949). It does not seem reasonable that under these circumstances the plaintiff, knowing this, would in 1948 blow hot in obtaining, as the Government claims, the Swiss permission of November 29, 1948 for inspection of the Sturzenegger papers but later would blow cold on June 15, 1950 in procuring their seizure. Nor is it reasonable that thereafter, faced with the threat of sanctions, including possible dismissal of its suit, plaintiff should make only perfunctory efforts, or as the Government claims, no real efforts at all. Hence the various examples of plaintiff's so-called successful efforts, cited by the Government in its Reply brief at p. 16-26, do not appear persuasive by contrast. They will be tested, however, to ascertain whether they show Swiss governmental action inconsistent with its seizure order, or anything else bearing on good faith. The Government cites (Gov. Reply br. p. 17):

(1) Chemie's letter of August 27, 1940 (Tr. Germ. 364-369, 403, Germ. Ex. 1(a)) to GAF enclosing various documents to prove Chemie's ownership of 900,000 shares of GAF common B shares. The letter states these documents "in part were given us in friendly cooperation by the banking institution of H. Sturzenegger & Cie." (Tr. Germ. Ex. 1(a) p. 405). The Government argues as to the above:

"No difficulty was allowed to arise from the fact that these documents disclosed business secrets of the Stur-

[1] Later the S. C. O. refused the United States access to lists of Sturzenegger documents examined. See present Report p. 27 [R. 2535] footnote 1.

zenegger firm, of Chemo and of * * * Voorindu." (Gov. Reply br. p. 17).

The answer is that Sturzenegger, the banker, made the disclosure.

2643 at the request of its customer, Chemie; hence there was no violation of bank secrecy as to Chemie. Even as to Chemo and Voorindu (affiliates of Chemie), Sturzenegger disclosed only so much as was necessarily a part of the disclosure Chemie was entitled to.

Also, Sturzenegger & Cie. was not reluctant to disclose in the present case; quite the contrary appears, though it had understandable qualms as to a mass inspection.[1]

(2) The Government refers to the violation of Sturzenegger & Cie's. privacy by the extensive Swiss Compensation Office investigation, when "it froze, seized, and examined every record of Chemie and of the Sturzenegger firm". (Gov. Reply br. p. 17). The Swiss note of January 10, 1951 (Hug Ex. No. 5, Tr. Hug p. 652) states that the Swiss Government did this pursuant to a treaty, the Washington Accord, (14 State Dept. Bulletin, p. 1101, 1121-1124). This was ratified by the Swiss Parliament and became the law of the land.

(3) The Government refers to plaintiff's Administrative Claim filed with the Alien Property Custodian in 1947 which traced its ownership of GAF shares with documents obtained from Sturzenegger & Cie. which revealed information as to many other firms. As the Government admits, these were all firms associated with Chemie and Sturzenegger in one way or another. (Gov. Reply br. p. 18-19). Sturzenegger & Cie. was the banker, Chemie the customer; the latter impliedly relaxed its right to bank secrecy under Article 47. As to possible objection from other companies mentioned, it appears they made no protest either under Article 47 or Article 273 (economic espionage), nor did the Swiss Government take an action, possibly because

[1] Plaintiff also has other answers; see Pl. Response p. 15.

there was nothing public in the banker's disclosures, which were utilized not in Switzerland but in a foreign country.

(4) The Government cites (Gov. Reply br. p. 19-20) a similar type of administrative claim filed in Germany for the return of stock in the Deutsche Laenderbank. The same considerations mentioned in (3) above apply to this claim.

2644 (5) This deals (Gov. Reply br. p. 19) with the alleged Swiss relaxation of its Constitution in permitting, by its note of November 29, 1948, the taking of depositions in Switzerland. This has already been dealt with in the present Report p. 16 [R. 2524]. As shown there was no exception made to the Swiss Constitution; there was an entirely legal authorization made under Article 271 as that article provides.

(6) If this claims (Gov. Reply br. p. 20) that the Swiss note of November 29, 1948 covered production of documents en masse, this matter has already been discussed, present Report p. 11 [R. 2519]. It has also been noted that the Swiss note of November 29, 1948 made an exception to Article 271 prohibiting acts of foreign officials on Swiss soil. The Swiss Government had a right to do this; it also has a right, which it exercised, to refuse special authorization where a Swiss bank was involved.

(7) The claim (Gov. Reply br. p. 20) that Mr. Sturzenegger, testifying by deposition herein, waived the privilege of various firms and persons and testified about their affairs freely. The testimony of both experts herein shows that by law the privilege belongs to the customer, not to the banker. Also, Mr. Sturzenegger was testifying as an officer of Chemie, not of Sturzenegger & Cie. It is hardly evidence against plaintiff that he testified in this Court more freely than Swiss law allows, if he did so. Also, he testified by judicial compulsion, under Judge Bailey's decision.[1]

[1] See plaintiff's brief p. 7-8, also footnotes pp. 54, 61 [R. 2562, 2569] of present Report.

(8) The claim (Gov. Reply br. p. 21) that Mr. Sturzenegger got information by trans-Atlantic telephone from his company about the escudos transaction. The discussion in (7) above is applicable here. (See also present Report p. 55 [R. 2563]).

(9) The claim (Gov. Reply br. p. 21) that Mr. Sturzenegger's answers pursuant to Judge Bailey's order constituted wholesale violations of bank secrecy. For the reasons above given, this is not believed to be so. But, if so, his answers erred on the side of free disclosure as an officer of plaintiff. His conduct is too remote from the ambit of Swiss governmental action to be of probative value against the Swiss Government.

It must be remembered that there is no word of direct evidence in the record of collusion between plaintiff and the Swiss Government; in the opinion of this writer there are no circumstances which point persuasively in
2645 that direction. It violates good sense to postulate collusion to suppress documents whose contents were already known in large part to the United States when the end result of such suppression might readily be the utter destruction of plaintiff's law-suit.

ANSWERS TO THIS COURT'S SPECIFIC QUESTIONS:

This Court in its opinion of February 15, 1951, quoted on p. 4 [R. 2512] of the present Report, after noting the fact of the seizure, asked certain questions bearing on plaintiff's good faith. These questions have constituted the chart or blue-print for the present investigation. To be certain they were formally considered, the Master propounded them to Mr. Germann, plaintiff's managing director, at the close of his testimony. Mr. Germann replied that all had been considered in prior testimony. (Tr. Germ. 388-390). The present Report has already dealt with each of these questions but for convenience of reference they will be briefly referred to, one by one, at this point.

(1) What were plaintiff's efforts to produce the Sturzenegger papers?

The background of the present problem has been considered at length in the present Report, p. 7 [R. 2515]. It appears that the Swiss note of November 29, 1948 did not, as defendant contends, authorize inspection of the Sturzenegger papers, a project which only arose in January, 1949. The note was, therefore, in no sense a waiver of its laws by the Swiss Government, still less of its Constitution, and there was thus no later retraction of a permission already given. Hence the present problem did not arise in an atmosphere of either arbitrary or collusive action by the Swiss Government.

The evidence shows that plaintiff's officers considered the problem seriously and did the best they could to obtain the Swiss Government's permission to produce the papers. Their efforts are set forth at length in the present Report, p. 33 [R. 2541]. Plaintiff's efforts after the seizure are likewise discussed (present Report, p. 42 [R. 2550]), as well as recent efforts, April-October, 1951. (Present Report, p. 6). [R. 2514]. Partial production was likewise considered. (Present Report, p. 36 [R. 2544]). An evaluation of plaintiff's efforts appears at p. 68 [R. 2576] of the present Report.

2646 (2) Did Plaintiff apply to the executive branch of the Swiss Government for permission to produce the papers; if so to whom and what was the form of the application?

The portions of the present Report already cited deal with this question. Plaintiff applied to the Swiss Federal Attorney for permission but he was adamant in his refusal and followed it up later by seizing the papers. Plaintiff also attempted to enlist the good offices of Minister Stucki, a powerful official friend who was in charge of the Washington Accord, but the latter saw no prospect of legal avoidance of the Swiss law.

The application to the Swiss Federal Attorney was not in writing but nevertheless appears to have been made in good faith. Plaintiff cannot be criticized for not putting in writing its desire to avoid or even violate Swiss law, which might only have made matters worse. The truth seems to be as stated by Mr. Germann, plaintiff's managing director, that they intended to produce the papers, or many of them, without too much thought of the legalisms involved, in somewhat the same way that Mr. Sturzenegger testified in his deposition. (Present Report p. 69 [R. 2577]. See also Tr. Oct. 15, 1951 p. 28). The seizure put an end to such possibilities.

After the seizure, the plaintiff approached various Swiss officials, especially Minister Stucki, who said nothing could be done; that the Swiss Federal Attorney, before he issued the seizure order, had obtained the prior approval of his superior, the Swiss Minister of Justice and the head of the Political Department, who was also the President of Switzerland. (See present Report p. 42 [R. 2550]). The Swiss President likewise refused to act. (Pres. Report p. 44 [R. 2552]).

(3) Did plaintiff exhaust its efforts through the executive branch or is the Swiss Federal Attorney the one to make the final decision?

This has partly been answered by the answer to the last question. The Swiss Federal Attorney's action was reviewable only by the Swiss Federal

2647 Council, on which sat the Minister of Justice and the Minister in charge of the Political Department. Both had given his order prior approval. Plaintiff's counsel advised it that it had no standing to appeal to the Council but assuming it had, stated an appeal would be useless. Minister Stucki confirmed the latter and plaintiff's expert so testified as to both matters. (Present Report p. 39, 63) [R. 2547, 2571]. Also, plaintiff was afraid to irritate the Swiss officials for fear they might prohibit the impending inspection of Chemie's documents, permission for which

hung in the balance (Present Report p. 42, 46) [R. 2550, 2554].

As already seen, plaintiff by its letter of April 2, 1951 requested the Swiss Government to release the papers in whole or in part, but this was refused and a later appeal was denied. The Swiss Government's order denying the appeal states that when its order of June 25, 1951 denied the plaintiff's application of April 2, 1951, the Department examined and endorsed the seizure order. (Present Report p. 44 [R. 2552], footnote).

(4) Are there any instances where the Swiss law as to secrecy of records such as those of Sturzenegger & Cie. have been waived?

Once it is understood that Article 273 of the Penal Code (economic espionage) and Article 47 (bank secrecy) are penal in character, the improbability that any power exists to "waive", in advance, the criminal law, becomes apparent. The plaintiff's expert testified there was no such power; no cases of waiver of criminal prosecution could be presented.

As to Article 47 (bank secrecy) the testimony was that unlike Article 273, it conferred a personal privilege which the owner of the secret could relax. Plaintiff's expert however contended that in such cases there were multiple owners of the secret and that all must relax the privilege; otherwise the banker would violate the law. Neither side produced any instances of waiver of bank secrets in any case comparable to the present. There was no practical way for plaintiff to obtain comprehensive waivers under Article 47; even if obtained the waivers would be
2648 ineffective under Article 273 with which the State was concerned. (See Present Report p. 101-125 [R. 2609-2633] re Article 273 (economic espionage) p. 125-132 [R. 2633-2640] re Article 47 (bank secrecy)).

(5) Is the Attorney General correct according to Swiss law, in confiscating the Sturzenegger papers?

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This has been exhaustively considered in the present Report, pps. 71-132 [R. 2579-2640], and the opinion is reached that there was a substantial legal basis for the seizure under the statutes cited in the seizure order itself, Article 273 Penal Code (economic espionage) and Article 47 Bank Law (bank secrecy) to say nothing of Article 271. The repeated affirmances by the Swiss Government of its right to seize the papers under these laws, on the basis of the preventive police power, is entitled to considerable weight as a construction in practice of its laws, if not as a true act of state unassailable under American law. (*Banco De Espana* v. *Fed. Reserve Bank*, 114 F. (2) 438; *U. S.* v. *Watkins*, 159 F. (2) 50; *The Claveresk*, 264 F. 276; *Ricaud* v. *American Metal Co.*, 246 U. S. 304; *Underhill* v. *Hernandez*, 168 U. S. 250). The present Report in a desire to develop and report fully the applicable facts and law and to answer this Court's specific questions, has not relied upon the doctrine of these cases as decisive. However, reflection suggests that unless there was collusion between the plaintiff and the Swiss Government at the time of or prior to the issuance of the seizure order, or in dealing with it later, the seizure must be taken as unassailable under Swiss law.[1] Under the American Constitution the recognition of a foreign government is in the hands of the executive branch of our government; once recognized by the State Department the validity of its acts on its own soil cannot be assailed in the American courts. (*Ricaud* v. *American Metal Co.*, 246 U. S. 304; *U. S.* v. *Belmont*, 301 U. S. 324, 327, 332; *U. S.* v. *Pink*, 315 U. S.

2649 203, 226, 223; *Bernstein* v. *Nederlandsche Co.* 76 F. Supp. 335, 340, and cases above cited). The judicial power under Article III of the Constitution does not go

[1] The Government, questioned during argument, stressed that it was what plaintiff did that counted; that the objective legality of the Swiss seizure order was not the point. It stated "there is no issue ultimately in this case of the validity of this order of the Swiss Government". (Tr. Oct. 15, 1951, p. 45-48).

this far: the difficulty of obtaining evidence is a practical obstacle and the impropriety of the courts of one country sitting in judgment on the sovereign acts of another make the rule announced by the above cases a reasonable one. Proof of collusion with the Swiss Government, a species of fraud, would not impinge on or detract from this doctrine; in such a case it would be the acts of the plaintiff, if proved, which would put it beyond the right to relief; the acts of the Swiss Government would still remain unfouched.[1] As already noted, there is no proof of collusion.

(6) Was it possible for plaintiff to have recourse to the Swiss Courts to obtain the production of the papers?

Experts on both sides were united in the opinion that there could be no recourse in the present case to the Swiss Courts. (Present Report p. 45 [R. 2553]).

MASTER'S FINDINGS AND CONCLUSIONS:

At the start of the hearings herein the Master ruled that on the present special reference the burden of proof was on plaintiff. (Tr. March 9, 1951 p. 12-13; cf. Tr. March 7, 1951, p. 24). The Master, on the basis of the testimony and for the various reasons given herein, comes to the general conclusion that plaintiff has sustained that burden and has shown good faith in its efforts to comply with this Court's order of July 5, 1949 to produce the Sturzenegger & Cie. papers.[2]

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[1] As said in *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357 "a seizure by a State is not a thing that can be complained of elsewhere in the courts. *Underhill* v. *Hernandez*, 168 U. S. 250. In *Bernstein* v. *Van Heyghen Freres S. A.*, 163 F. (2) 246, 249, cert. denied 332 U. S. 772, the court said: "We have repeatedly declared, for over a period of at least thirty years, that a court of the forum will not undertake to pass upon the validity under the municipal law of another state of the acts of officials of that state, purporting to act as such."

[2] The Intervenor requests the Master to recommend that the plaintiff's motion to be relieved of producing the Sturzenegger papers be grantd. (Intervenor's br. p. 6-7). This appears outside the present special order of reference.

VOLUME II

(Pages 520 to 1011)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 318

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC., PETITIONER,

vs.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 6, 1957

CERTIORARI GRANTED OCTOBER 14, 1957

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12140

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. ETC. (I.G. CHEMIE), *Appellant*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES, *Appellees*

Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

Volume II

(Pages 520 to 1041)

2690 Filed February 13, 1952. Harry M. Hull, Clerk.

Motion Under Rule 34 of the Federal Rules of Civil Procedure for the Production of Documents.

The defendants by their undersigned attorneys respectfully move the Court:

A. For an order requiring plaintiff to produce, for inspection, copying, and photographing or microfilming by the defendants each of the following documents, in plaintiff's possession, custody, or control:

1. Each document bearing any of the numbers listed in Exhibits 1, 2 and 3 to the attached affidavit of Olga H. Hoffmann.
2. Each document bearing a register stamp described in the attached affidavit and showing any of the numbers listed in Exhibit 4 to the attached affidavit, and any register, index, log book or other device listing or describing in any manner the documents stamped with that or a similar register stamp.
3. The jackets or folders described in part 4 A of the accompanying affidavit.

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4. All documents and account books of Grutchemie Consortium, and any other Consortia in which plaintiff had a majority interest and of Tefiag, A. G.
5. The documents described in parts 5 A, C, and D of the accompanying affidavit.
6. Any document or material required to be produced by the order of July 5, 1949 and not yet produced.

B. For such other relief as may be just and proper in the premises.

Respectfully submitted,

[Signed by counsel for defendants]

February 13, 1952.

2779 Filed May 31, 1952. Harry M. Hull, Clerk.

Supplemental Report on Reopening.

OPINION

OUTLINE OF OPINION:

The evidence adduced on reopening does not require any modification of the conclusions set forth in the original Report filed herein. No "waiver" of the Swiss secrecy laws has been shown. The Bank Waedenswil was acting in its proprietary capacity,—for itself, and not for its customers in the Lieberknecht-Tristat-Friedberg transactions. The papers it produced pursuant to Judge Lett's order were either its own or those of its subsidiary or were obtained from the attorney for other persons or corporations involved. The evidence shows no violation of Article 273 (economic espionage) or Article 47 (bank secrecy). The Swiss Government is not shown to have acted inconsistently and the efforts of the Bank Waedenswil to comply with this Court's order were not essentially different from those of Chemie. The tacit permission to disclose in the one case and its refusal in the other is attributable to basic differences in the circumstances of the two cases and does not indicate collusion. Nor do

2780 the facts herein suggest error in prior conclusions as to Swiss law, in particular Article 273, Article 47, or a to the preventive police power.

WM. J. HUGHES, JR.
Special Master

Dated May 31, 1952

2801 Filed July 9, 1952. Harry M. Hull, Clerk.

Findings of Fact.

1. This Court's order of July 5, 1949, required plaintiff to produce for inspection by the Government's attor-

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of H. Sturzenegger et Cie., a Swiss banking corporation located in Basle, Switzerland.

2. Such documents are described as "(a) The some 700 jackets and 140 account books on the premises of I. G. Chemie and H. Sturzenegger et Cie." examined in 1945 and 1946 by the Swiss Compensation Office; (b) The lists of the some 2,500 original documents taken by investigators of the Swiss Compensation Office in 1945 and 1946 from the premises of I. G. Chemie & H. Sturzenegger & Cie."

3. The above documents apparently in excess of some 55,500 files, were not produced as ordered. Instead they were seized June 21, 1950 by an order of June 15, 1950 of the Swiss Federal Attorney reciting that their production would constitute the fact of prohibited economic espionage (Art. 273 of the Penal Code) and would also violate bank secrecy (Art. 47 of the Swiss Banking Law), "which offenses the Federal Authorities have to prevent in order to maintain the public security and order on the basis of their preventive police power."

4. The above papers continue to be held in the constructive possession of the Swiss Federal Attorney.

2802 5. Their production or attempted production by plaintiff under the present circumstances would constitute a crime punishable by fine and imprisonment under Article 289 of the Swiss Penal Code.

6. This Court by order of March 1, 1951 instructed the Master herein to take evidence as to the plaintiff's good faith in its efforts to comply with this Court's order of July 5, 1949 requiring production of the Sturzenegger et Cie. papers.

7. The Master finds that plaintiff has shown good faith in its efforts to comply with this Court's order of July 5, 1949 directing it to produce the Sturzenegger et Cie. papers.

8. No collusion at any time has been shown between plaintiff and the Swiss Government.

9. The Swiss Government at no time waived or relaxed its Constitution or laws in plaintiff's favor.

10. The Swiss Government has acted consistently throughout in the present case and the Waedensvil case.

11. The Swiss diplomatic note of November 29, 1948 granted permission under Article 271 of the Swiss Penal Code to take the oral depositions in Switzerland of plaintiff's officers and agents and to use plaintiff's documents as an incident thereto. Article 271 prohibits acts of foreign officials on Swiss soil unless such special permission is obtained.

12. This note had no reference whatever to an inspection of documents en masse or inspection of Sturzenegger et Cie.'s documents at all.

13. The project of inspecting Sturzenegger et Cie.'s documents (en masse or at all) was not formulated or at least not revealed until the Government's motion to inspect was filed in this Court January 18, 1949.

14. The Swiss note of November 29, 1948 permitting oral examination of plaintiff in Switzerland was the result of plaintiff's efforts, in particular its letter of November 24, 1948, followed by conferences.

2803 15. The permission to take plaintiff's deposition in Switzerland, with incidental use of plaintiff's documents, was declined by the American Government.

16. The reason for so declining was that the American State Department was in effect attempting at the time to obtain a broad permission under the provisions of Article 271 prohibiting, without authorization, acts of foreign officials on Swiss soil; the Swiss diplomatic note merely granted a permission under Article 271 for this particular case.

17. A Swiss diplomatic note of January 10, 1951 interprets its prior note of November 29, 1948 and confirms the latter's limitation to oral examination in Switzerland of plaintiff's officials, with incidental use of plaintiff's documents, and as excluding inspection of papers of Sturzenegger et Cie., a Swiss bank, as to which Article 47 of the Banking Law guaranties secrecy.

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18. On the basis of the two diplomatic notes above referred to, the history of the inspection efforts and the proceedings in this Court, the Master finds as a fact that at no time did the Swiss Government give permission, by way of exception under Article 271 of the Swiss Penal Code, or otherwise, for American officials to inspect the papers of Sturzenegger et Cie., a Swiss bank.

19. This Court's order of July 5, 1949 provided that after plaintiff's inspection of the Government's documents, the deposition of Hans Sturzenegger should be resumed and thirty (30) days after its completion, the Government should commence its inspection of plaintiff's and Sturzenegger et Cie.'s documents.

20. Through no fault of his own, the deposition of Hans Sturzenegger was not completed until May 29, 1950.

21. Plaintiff has never voluntarily been in default. The time for plaintiff to produce the Sturzenegger et Cie. papers had not arrived when they were seized June 21, 1950.

2804 22. Hans Sturzenegger and Sturzenegger et Cie. were at all times ready and willing to produce the latter's papers for Government inspection.

23. This willingness continued subsequent to repayment to plaintiff on August 27, 1949 of its investment in Sturzenegger et Cie.

24. Even prior to such repayment plaintiff as a limited partner had no voice in the management of Sturzenegger et Cie. but a mere right to information as to the course of business.

25. In April, 1950 officers of plaintiff and Sturzenegger et Cie. had lengthy discussions with plaintiff's attorney, Dr. Wehrli, as to the best way to obtain the Swiss Government's permission to produce the Sturzenegger et Cie. papers.

26. To that end Hans Sturzenegger and Dr. Wehrli saw Dr. Luthi, the Swiss Federal Attorney, on May 4, 1950,

advised him of this Court's order and requested his assistance.

27. Dr. Luthi was uncooperative, drew their attention to the fact that Article 273 (economic espionage) and Article 47 (bank secrecy) were involved and gave them a definite and clear warning that anything they did would be on their own responsibility.

28. Dr. Luthi's warning had added force as a deliberate violation of Article 273 (economic espionage) is additionally punishable, extending even to penitentiary confinement in serious cases.

29. As Dr. Luthi, the Swiss Federal Attorney, had held a violation of Swiss law would be involved plaintiff did not obtain a written opinion from its attorney, Dr. Wehrli, to attempt to change Dr. Luthi's attitude.

30. Further, plaintiff's attorney, Dr. Wehrli, advised plaintiff that the Swiss Federal Attorney's view was legally correct.

31. Plaintiff's and Sturzenegger et Cie.'s officers continued to try to find a means of producing the documents during April-May,

2805 and up to Mr. Sturzenegger's return to the States May 10, 1950.

32. During this period plaintiff discussed with Mr. Sturzenegger the possibility of a partial production of papers of Sturzenegger et Cie. dealing with plaintiff and its affiliates such as Osmon, Parta, Voorindu, Chemo, I. G. Farben, and other companies. They felt that many such files could be produced.

33. Plaintiff and Sturzenegger et Cie. were strongly apprehensive, because of Dr. Luthi's attitude, but having no firm prohibition, had concluded they would decide for themselves all questions of secrecy.

34. They realized they were in a dilemma but kept looking for solutions and were confident that they could at least do something, thinking especially of Osmon and the corporations in which plaintiff alone had an interest.

35. The difficulty about a partial production, i.e., of papers of wholly controlled or affiliated companies was that they feared the American Court would not be pleased with such a meagre compliance and it might make a bad impression.

36. In particular they feared producing a small amount of papers, bearing in mind the magnitude of the total, some 700 file jackets and 140 account books, in excess of 55,500 documents.

37. The matter of partial production was discussed with their counsel, Dr. Wehrli, many times after the seizure order.

38. Partial production was likewise so discussed with Dr. Rebsamen and Dr. Schnyder of the Swiss Political Department, but without favorable result.

39. Subsequent to the inspection of plaintiff's documents in Switzerland in the summer of 1950, a partial production, i.e., of affiliates' papers would only have revealed counterparts the Government already possessed, i.e., originals for carbons, or carbons for originals.

2806 40. On the basis of the American Government's refusal of the offer in the seizure order to release particular papers it would appear that our Government would not have been satisfied with a partial production.

41. On the return of Mr. Sturzenegger from the United States to Switzerland in early June, 1950 the problem was again actively discussed.

42. The problem was likewise discussed by plaintiff on several occasions with Minister Stucki, a powerful Swiss official in charge of the Washington Accord covering liquidation of German assets in Switzerland for the Allies' benefit.

43. Minister Stucki, the Swiss Government's expert on plaintiff's affairs, was approached on not less than five different occasions and his aid requested. He saw no solution, drawing a distinction between plaintiff's papers and

Sturzenegger et Cie.'s; as to the latter he said bank secrecy would apply and their production would be impossible.

44. Upon receipt of the seizure order of June 15, 1950, plaintiff had further discussions with Sturzenegger et Cie., the plaintiff's attorney and various officials of the Swiss Political Department as to possibility of an appeal and also had conversations with Minister Stucki.

45. Plaintiff's attorney advised it that only Sturzenegger et Cie. had the right of appeal, namely to the head of the Swiss Department of Justice; that plaintiff had no such right; that no one had a right of appeal to the courts.

46. Plaintiff's attorney, Dr. Wehrli, likewise advised it that the seizure order was legal in every respect and there was no possibility at all of it being reversed on appeal.

47. Minister Stucki advised plaintiff that the action of the Swiss Government in seizing the papers was the only action it

2807 could have taken; that the Swiss Federal Attorney had not acted on his own initiative but had taken it up in advance with his superior, Federal Councillor von Steiger, head of the Swiss Department of Justice, and with Mr. Petitpierre, head of the Political Department and President of Switzerland.

48. As the appeal would be to the head of the Department of Justice (Dr. von Steiger) Sturzenegger et Cie. felt it would be useless as he had already approved the seizure in advance.

49. Also, the impending inspection of plaintiff's documents on Swiss soil—an innovation in Swiss practice—rendered plaintiff reluctant to risk irritation of the Swiss Government. Permission for such inspection was obtained by plaintiff with difficulty from Dr. Rebsamen and Dr. Schnyder, officials of the Swiss Political Department at about this time. Both these officials considered the seizure order valid.

50. The Swiss Government by its decision of September 6, 1951, states that when it issued its order of June 25,

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1951, which refers to the Swiss note of January 10, 1951, it approved the seizure order.

51. Sturzenegger et Cie. did not appeal from the seizure order; its decision not to do so expressed its best judgment at the time and was made in good faith.

52. There was conflict in the expert testimony herein as to whether plaintiff as distinguished from Sturzenegger et Cie. had a right of appeal from the seizure order. The better view is that plaintiff had no such right. The authorities appear to require a legal interest and the Swiss Government invaded no legal right of plaintiff when it seized another company's property.

53. The problem of how to produce the Sturzenegger et Cie. papers was the subject of constant discussion between plaintiff, its attorney, and Sturzenegger et Cie. during the time the

2808 American officials were engaged in inspecting plaintiff's papers in Switzerland in the summer of 1950.

54. Plaintiff, its attorney and Sturzenegger et Cie. tried again to find means to comply with the inspection order and had conferences with Dr. Iselin, President of plaintiff, a lawyer, and with Dr. Keller, a director of plaintiff, and an outstanding lawyer. No one saw a solution to the legal difficulty.

55. Subsequent to the filing of the Government's Motion to Dismiss herein (October 31, 1950) plaintiff had day-to-day contacts with Dr. Schnyder of the Swiss Political Department in an effort to obtain inspection of the Sturzenegger et Cie. papers. All such efforts were unsuccessful.

56. Likewise, Dr. Iselin, President of plaintiff, Dr. Wehrli, plaintiff's attorney, Mr. Sturzenegger and Mr. Germann once more saw Minister Stucki with the same object in view. Minister Stucki expressed indignation at statements made in the Government's Motion to Dismiss herein and stated the Swiss Government would not overlook such statements.

57. The Swiss diplomatic note of protest dated January

10, 1951, followed which stated that the Swiss Federal Government had no power to authorize inspection of papers of a Swiss bank; that such inspection would violate Article 47 (bank secrecy); that the Swiss Federal Government could not grant immunity for such a violation which could be prosecuted by cantonal authorities or individuals.

58. The Government's expert witness while he said the Swiss note of January 10, 1951 was wrong, admitted it was an authoritative statement by the Swiss Federal Council in charge of Swiss diplomatic affairs; that there was no appeal from it, and that the courts could not overrule it.

59. Subsequent to the filing of the Government's Motion to Dismiss, plaintiff discussed production of the seized papers with

2809 Mr. Petitpierre, head of the Political Department, and President of Switzerland. They advised Mr. Petitpierre that plaintiff and its associates were still trying to find a way out of their predicament. The Swiss President was familiar with the matter and said he saw no possibility of cancelling the seizure order and that it was legal.

60. Possible inspection of the Sturzenegger et Cie. papers by letters rogatory was explored by plaintiff's counsel but he advised that a general inspection by this method was not feasible.

61. There is no evidence that plaintiff or its officers either directly or indirectly in any way whatsoever arranged or attempted to arrange for the Swiss Government to seize the Sturzenegger et Cie. papers or in any other way prevent their production.

62. The Swiss Government in permitting inspection of plaintiff's papers in July 1950 stipulated that such permission did not release plaintiff from its obligations to observe the provisions of Article 273 (economic espionage) and Article 47 (bank secrecy).

63. Such inspection took place in the presence of Dr.

Schnyder of the Swiss Political Department and an agent of the Swiss Federal Police.

64. The latter stated his main duty was to watch that the American officials did not overstep the limits of the inspection allowed.

65. The same police officer warned plaintiff's President that he must signal him immediately if any attempt was made to get the Sturzenegger et Cie. papers.

66. Dr. Schnyder was present during the entire inspection and personally passed on every paper as it was handed over to the American officials.

2810 67. Dr. Schnyder withheld one military document and in the case of other documents placed the responsibility on plaintiff as to whether their production would violate Article 273.

68. In such instances plaintiff consulted its counsel, Dr. Wehrli, and obtained his advice that no violation would be involved after which Dr. Schnyder was so advised.

69. At no time, before, during or after the inspection, did the Swiss Government advise plaintiff that Article 273 (economic espionage) had been waived or that there would be no prosecution if a violation occurred during the inspection.

70. The inspection procedure in the case of the Bank Waedensvil, its terms and conditions, the warning against possible violations of Swiss secrecy laws, the presence throughout of a Swiss official, was similar in all material aspects to the circumstances of the inspection of plaintiff's papers herein, except that in the case of the Bank Waedensvil the Swiss Government refused permission to allow American officials to inspect the papers in Switzerland.

71. The evidence in the present case and the Waedensvil case shows the Swiss Government has a serious regard for the Swiss secrecy laws, in particular Article 273 (economic espionage) and Article 47 (bank secrecy) and meticulously enforce them.

72. The fact that Hans Sturzenegger of Sturzenegger et

Cie. testified as a witness before this Court and may or may not have revealed Swiss secrets is legally irrelevant either to what plaintiff could do under Swiss law or did do in obedience to this Court's order.

73. The conduct of plaintiff's officers in disclosing data in plaintiff's Administrative Claim filed herein or in correspondence, i.e., data obtained from Sturzenegger et Cie., is likewise legally irrelevant to plaintiff's good faith in attempting

2811 to obey this Court's inspection order of July 5, 1949. They had no thought at the time of Article 273 as an obstacle.

74. For the same reason the disclosure of data, such as information as to third parties, in the joint application of plaintiff and Sturzenegger et Cie. made to the German Government for the return of Laenderbank stock does not impinge upon plaintiff's efforts made in good faith under the circumstances herein involved.

75. The fact that plaintiff did not secure a written opinion from its counsel as to the problem of production of the Sturzenegger et Cie.'s papers fails to show bad faith. The evidence shows serious consideration of the problem and consultation amongst various lawyers. The minutes of 15 meetings of plaintiff's Board of Directors show consideration of other serious problems in the way the present was considered, and similar approaches to Swiss officials.

76. Summing up as to plaintiff's efforts, its officers acted reasonably and as prudent men would. They did the best they could to obey this Court's order and to that end approached the Swiss Government in the way they felt most likely to succeed. There is no showing that other or different efforts would have been more successful. Their efforts were in entire good faith throughout.

77. The Swiss Federal Government possesses the preventive police power, stemming from Article 102 of the Constitution and from customary law, enabling it to prevent the commission of crime.

78. The preventive police power must be distinguished from criminal law powers of prosecution of crime, seizure of evidence, etc., which presuppose that a crime has either been committed, or is in course of commission or that an attempt is being made to commit one.

2812 79. Article 102, Section 10 of the Swiss Federal Constitution is particularly the source of the preventive police power. That section in prescribing the powers and duties of the Swiss Federal Council states that it "provides for the internal security of the Confederation, and for the maintenance of tranquillity and order."

80. The preventive police power covers maintenance of public order and the prevention of public scandal. Public order has a broader meaning than public disturbance.

81. The preventive police power extends to the prevention of any subversion of the right order of things as established by law or custom and thus reaches private acts having public consequences or affecting members of the public.

82. The preventive police power necessarily includes the right to prevent violations of any section of the Penal Code, including violations of Article 271 (prohibited acts of foreign officials on Swiss soil) and Article 273 (economic espionage); it also includes the right to prevent violations of the Banking Law, in particular Article 47 guaranteeing bank secrecy.

83. The power is a flexible one, vesting large discretion in the Swiss Federal authorities. Its exercise is not subject to review by the courts nor can a given act taken under it be overturned by the Swiss Parliament, which is limited to criticism or comment on the act done.

84. The Swiss constitutional authority Fleiner states that the police have the duty to maintain public law, public order and public security, and protect the public law "by preventing criminal actions."

85. Fleiner likewise states that the preventive police power extends not only to the prevention of crimes but to

the protection of "the legally recognized rights of individuals and
2813 of the public against dangers threatening their existence or their integrity."

86. There is no conflict under Swiss law between extension of the preventive police power to prevent so-called private crimes and the freedom of the individual constitutionally guaranteed. The rights of the individual are not absolute but have inherent limitations "along the line where the police power begins."

87. From the Swiss viewpoint as long as the order of the American Court stands, requiring the records to be produced, the danger of the commission of an offense under Swiss law is imminent and the Swiss Federal Attorney has power to seize the papers.

88. There is no conflict between the doctrine of the preventive police power and the rights of freedom as enunciated by Giacometti-Fleiner, Swiss Constitutional Law, Chapter 4 (von Steiger Ex. 36) and Ruck, Swiss Administrative Law (von Steiger Ex. 37).

89. The doctrine of the preventive police power above enunciated is supported by four decisions of the Federal Court:

(a) the case of the *Swiss Socialist Party* (55 Dec. Fed. Ct. p. 228, Hug. Ex. 5), prohibition of Socialist demonstration; confiscation of propaganda leaflets.

(b) the *Moser* case (57 Dec. Fed. Ct. p. 266, Hug. Ex. 7), prohibition of Communist Youth meeting, present or future; prohibition of use of posters or leaflets.

(c) the case of the *Natipnale Front* (61 Dec. Fed. Ct. p. 103, Hug. Ex. 8), prohibition of a torch-light parade.

(d) the *Schild* case (71 Dec. Fed. Ct. p. 82, Hug Ex. 9), an herbalist pretending to have a cancer cure was stricken from the register of practitioners to prevent his treating future patients.

The first three cases involve public disturbances; the last prevents private acts having public consequences.

90. Certain other cases involve use of the preventive police power:

(a) the *Kampfer* case, 60 Dec. Fed. Ct. p. 108, von St. Ex. 23, suspension of a Communist newspaper during a strike.

(b) the case of the *Unemployed March on Berne* (61 Dec. Fed. Ct. p. 32, von St. Ex. 21), prohibition of a public demonstration.

(c) the *Traveletti* case (63 Dec. Fed. Ct. p. 213, von St. Ex. 22), prohibition of use of dredge (a labor saving device) to prevent public disorder.

(d) the case of the *Geneva Zoo* (67 Dec. Fed. Ct. p. 74, von St. Ex. 20); the police closed the Zoo because the condition of the animals amounted to a public scandal. The case shows the preventive police power is not limited to crimes but covers public scandal.

(e) the suppression of *Ipa Korrespondenz* (Rep. Fed. Alty, 1938, p. 167) and other publications prejudicing the internal and external security of the Confederation. The prohibition also covered all publications designed to replace them—a long-range preventive action.

(f) the case of the *Committee for Boycott of Italy* (Swiss Fed. Rep. 1935, p. 168). The Swiss Federal authorities seized certain unpublished tracts, posters, etc., as a menace to Swiss-Italian relations. The seizure was squarely based on the Swiss Constitution, Article 102 (8) and (9), one of the sources of the preventive police power. No public disturbance was threatened; the seizure was once more a long-range preventive act.

(g) the case of the seizure at *Chiasso* and later con-

fiscation of brochures on the *Ticino question* (Swiss Fed. Rep,
2815 for 1924, p. 305). This action was likewise based on Article 102 (9) and (10) of the Swiss Constitution, the seized brochures being of a nature "to disturb order and calm in the country as well as to prejudice the good relations between Switzerland and Italy."

91. The above cases show wide discretion in the use of the preventive police power to carry out Swiss policy, foreign or domestic; an imminent public disturbance is not necessarily involved, nor is an actual crime.

92. The use of the preventive police power in the present case is not dissimilar to its use in certain of the cases above cited. In any event Swiss law is not based on precedents; the Federal Council can create new precedents at will; its action cannot be overturned by the Courts or by Parliament; under these circumstances it cannot be said that there was not a basis in Swiss law for the exercise of the power herein.

93. The Swiss Government has affirmed the legality and propriety of the exercise of the preventive police power in the present case on five separate occasions:

(1) In the seizure order itself.

(2) In the Swiss Diplomatic note of January 10, 1951.

(3) In the decision of the Swiss Department of Justice and Police dated June 25, 1951 refusing to allow Dr. Luthi to testify herein "to defend the lawfulness of his order."

(4) In the decision of the same Department dated June 25, 1951, refusing to modify the seizure order,

(5) In the decision of the Swiss Department of Justice and Police, dated September 6, 1951, denying the appeal from (4) above.

94. These affirmations by the Swiss Government are of weight as showing its construction of its own powers.

2816 95. The evidence fails to show that the application of the preventive police power to the present case does legal violence to concepts of Swiss law shown by authorities; on precedent and authority no convincing argument can be made that as a strictly legal matter the present seizure was outside the preventive police power.

96. The seizure order has an alternative validity either (a) as a determination by the Swiss Government that the preventive police power extends to prevention of a private crime as distinguished from a public one, or (b) as a determination by the Swiss Government that the day-to-day inspection by foreign officials of some 55,500 papers belonging to a Swiss bank might amount to a public crime or a public scandal.

97. From the Swiss viewpoint the seizure order is also valid under Swiss law as a precautionary measure to prevent violation of Article 271 of the Swiss Penal Code.

98. Article 271 of the Swiss Penal Code prohibits anyone doing acts on Swiss territory on behalf of a foreign state, which acts would be within the province of a Swiss governmental agency or official, unless prior authorization is given therefor by the Swiss Government.

99. An inspection by American officials of papers belonging to a Swiss bank would be a crime under Swiss law unless specially authorized by the Swiss Government.

100. Such inspection would constitute acts done on Swiss soil by a foreign government not only (a) in a general sense as a projection of American judicial authority into Switzerland but (b) in a particular sense as the American Government was itself the party making the inspection.

101. Article 271 is referred to in the Swiss Diplomatic note of January 10, 1951 as an applicable statute supporting the use of the preventive police power.

2817 102. The fact that Article 271 is not mentioned in the seizure order itself does not, under Swiss law, eliminate it as a legal support of that order.

103. Expert witnesses in the present case are agreed that an inspection, without Swiss authorization, of Sturzenegger et Cie.'s documents by American officials would constitute a violation of Article 271.

104. The Swiss Diplomatic note of January 10, 1951, states that authorization was granted for American officials to inspect plaintiff's documents in Switzerland but not the documents of Sturzenegger et Cie. The latter refusal has earlier precedents in Swiss Diplomatic notes dated April 23 and September 16, 1947 and still earlier refusals dated November 25, 1938 and September 4, 1922.

105. In addition there is the precedent of certain Dutch foreign exchange officials being arrested and expelled from Switzerland for doing acts on Swiss soil not specially authorized.

106. The seizure order states that production of the Sturzenegger et Cie. papers "would constitute the fact of prohibited economic espionage (Art. 273 penal code)."

107. Article 273 of the Swiss Penal Code provides:

> "Economic intelligence service in the interest of foreign countries: Whoever elicits a manufacturing or business secret in order to make it accessible to a foreign official, agency or to a foreign organization or private enterprise or to any agents of same,
>
> "Whoever makes accessible a manufacturing or business secret to a foreign official, agency, or to a foreign organization or private enterprise or to any agents of the same, shall be punished by imprisonment and in serious cases by penitentiary. In addition to that penalty, a fine may be imposed."

108. The evidence shows that the prevention of a violation of Article 273 was an additional legal ground for the seizure.

2818 109. The first section of Article 273 deals with spying, i.e., attempting to obtain a business secret, coupled with the intent to pass it on to a foreign official, agency or organization, etc. The offense is complete although nothing is actually passed on.

110. The second section of Article 273 denounces the actual disclosure of a business secret to a foreign official, agency or organization, etc.

111. The term business secret as used in Article 273 means more than "secret" in the usual sense; it includes any items of business information the owner does not wish disclosed.

112. The desire to have certain information kept secret may be held by persons other than the owner or operator of a business, i.e., it may be held by its employees or customers, or by members of the public generally.

113. It is irrelevant that the right in certain cases may enjoy special protection as in the case of patients of a physician, clients of a lawyer, customers of a bank, etc.

114. It is irrelevant that the information is already known to others, or to a certain group, or even in Switzerland as a whole; the test is whether the owner of the secret has a legitimate interest in having it kept from foreign knowledge.

115. The term "business secret" includes false reports about a person's affairs as well as true ones.

116. No special injury to the state or to general economic interests, or to the Swiss economy as a whole is needed for a violation of Article 273.

117. There may be multiple owners of a single business secret. An owner includes any person who has a legitimate right or desire not to have the information revealed.

118. Article 273 does not require, for prosecution, that the owner of the secret must have indicated, in advance, his desire

2819 for secrecy. The inquiry later, upon disclosure, is whether the owner could be said to have a legitimate interest against disclosure.

119. As of the date of seizure the Sturzenegger et Cie. papers were, *de facto*, secret—the confidential records of a Swiss bank. Hence, the Swiss Federal Government had the right under its preventive police power to seize them

if it had reason to believe, as it did here, that a violation of Article 273 would occur.

120. In view of this it is irrelevant to the question of the validity of the seizure that, as the Government contends, plaintiff could by prior waiver have released the secret, i.e., the bank records.

121. If the sole owner of a business secret reveals it in the ordinary course of business and thus puts it into the public domain, the circumstances would by definition be outside the scope of Article 273.

122. If, however, the owner of a business secret deliberately orders it revealed to a foreign government he would appear to act in the teeth of Article 273.

123. Particularly is this so where, as here, the information would be voluminous bank records, traditionally confidential under Article 47 of the Swiss Bank Law.

124. In such a case the better view is that a public interest would be involved and no private waiver or release would destroy the state's right to prosecute under Article 273.

125. Likewise, the delivery of extensive bank records to a foreign power would not appear to be such a release of the secret as is referred to in No. 121 above.

126. Under Swiss law all parties to the secret must release it to take it outside the scope of Article 273. In the case of a bank it is the customer, not the banker, who has power under Swiss law to release the secret. Any disclosure by plaintiff would run the risk of complaints from third parties who might be injured thereby.

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127. A private release, i.e., an order to Sturzenegger et Cie. to disclose, appears impracticable in the present case, there being multiple owners of the so-called secrets contained in the 700 jackets, the 140 account books, the 55,500 files of Sturzenegger et Cie.

128. Cases applying the above principles have been decided in the Swiss courts.

129. In the *Dandliker* case (65 Fed. Ct. Dec. I, p. 49, von St. Ex. 15) German women worked in Switzerland but lived in Germany. An informant who told the German officials the amounts of their wages was convicted of violating Article 273. The court held it was sufficient that the German women had an interest in keeping this information from the German authorities.

130. In the *Bodmer* case (65 Fed. Ct. Dec. I, p. 330, von St. Ex. 16) a Swiss informant told a German agent of persons smuggling foreign exchange into Germany. He was convicted under Article 273, the Court holding that a smuggler naturally had an interest in keeping his actions secret and that his interest was entitled to protection.

131. In the *Brugger* case (71 Fed. Ct. Dec., part 4, p. 217, von St. Ex. 17) the Court held Article 273 prohibited false reports of investments in Switzerland given to German agents. The Court affirmed the *Dandliker* and *Bodmer* decisions, holding that "Article 273 has not been established for the protection of private interests;".

132. In the *Pencherek* case (74 Fed. Ct. Dec. part 4, p. 102-104, von St. Ex. 18) the Court again penalized false information against a smuggler.

2821 133. In the *Duval* case (74 Fed. Ct. Dec. part 4, p. 206, von St. Ex. 18) the defendant attempted to get information from two factory employees as to a bicycle valve process, his object being to pass on the information to a Belgian company. The court held the information need not be important to the Swiss economy.

134. In the *Rota* case (79 Journal des Tribuneaux, p. 83, Gov. Hug. Ex. 3) a woman was prosecuted under Article 273 for sumggling out of Switzerland a brass safety device and drawings for a gun fuse. The conviction was set aside as to the safety device, as it was shown to have been sold publicly by the manufacturer. It was sustained as to the drawing which if not a secret of national defense was at least a secret of the Tavaro Company.

135. The expert testimony and the authorities cited show

that any attempt by direct order of plaintiff to Sturzenegger et Cie. to disclose the information, or by waivers from plaintiff or affiliated or controlled companies, would have come within the interdict of Article 273 and have resulted in substantial risk of prosecution.

136. Permission under Article 271 to foreign officials to inspect documents is in no case a waiver of the provisions of Article 273.

137. There is no power at all under Swiss law for a waiver of the provisions of a penal statute such as Article 273, nor can any Swiss authority or officer create an exemption from such statute.

138. The seizure order states that production of the Sturzenegger et Cie. papers "would violate the bank secrecy (Article 47 of the Federal Law of 8th November, 1934, regarding banks and savings banks." That statute, in pertinent parts, states:

> "Art. 47. Any person who wilfully * * * (b) in his capacity as organ, officer or employee of a bank, as auditor or assistant auditor, as member of the Banking Commission, officer or employee of its secretarial office, violates his duty to observe silence or the professional secrecy, or whoever induces or attempts to induce a person to commit such an offense, shall be fined not more than twenty thousand francs, and/or shall be imprisoned for not longer than six months.
>
> "If the offender acted negligently, the penalty is a fine of not more than ten thousand francs."

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139. According to Swiss law, bank secrecy, as it relates to Article 47, may be waived by the owner. However, one single piece of information may have as many owners as there are parties to a transaction, and only if all these owners have waived the secrecy of that particular piece of information is the banker free to disclose it to the public.

140. The banker cannot waive the secret. It is the customer and other owners of the secret who must effectuate the waiver.

141. Since all parties to a banking transaction must waive bank secrecy and since there are numerous parties to the myriad Chemie-Sturzenegger transactions, it seems clear that, as a practical matter, waivers alone could not solve the present problem.

142. While a violation of Article 273 (economic espionage) comes within Swiss Federal jurisdiction, a violation of Article 47 of the Bank Law comes within the Cantonal jurisdiction and would be prosecuted by cantonal, as distinguished from the federal authorities. Nevertheless, by virtue of Article 344 of the Swiss Penal Code, if an individual simultaneously violated Article 273 and Article 47,—which occurs when a banker divulges secrets to a foreign agent—the expert testimony is that the federal authorities would take jurisdiction of the concurring cantonal offense. This is because Article 273 carries the greater punishment, which is a test under Article 344 as to whether the federal or cantonal authorities shall take jurisdiction over the concurring crime basically in the jurisdiction of the other.

2823 143. While Article 344 literally applies to situations only after the offenses have been committed. the seizure in this case falls into the general policy of Article 344 in view of the anticipatory nature of preventive police power, that is to say, the federal authorities were preventing the commission of an offense they might later have had to prosecute.

144. Article 47, as well as Article 273, forms a legal basis under Swiss law, and from the Swiss viewpoint, for the seizure order.

145. On April 2, 1951, plaintiff applied to E. von Steiger, Head of the Federal Department of Justice and Police and President of the Swiss Confederation, for permission to have his subordinate, the Swiss Federal Attorney, testify before the Special Master in this proceeding. On the same day, plaintiff applied to the Swiss Federal Attorney to countermand his seizure order dated June 15, 1950 and

to permit the production of the Sturzenegger papers before this Court; and, alternatively, that the seizure order be modified to permit the Sturzenegger Bank to produce "those records the production of which involves neither a violation of Art. 273 St. G. B. (prohibited economic espionage) nor of Art. 47 of the Bank Law (bank secrecy)."

146. On June 25, 1951, President von Steiger denied the application of the plaintiff for permission to have the Swiss Federal Attorney testify in these proceedings; and in his decision, the President stated that the lawfulness of the order of the Swiss Federal Attorney is established both from the point of view of criminal law and from that of preventive police power, referring to Articles 271, 273 and 344 of the Penal Code and Article 47 of the Bank Law. The decision contained the following paragraph:

> "It was already stated in the note of 19th January, 1951 addressed to the American Government
> 2824 that it is a part of the duties of the Office of the Swiss Federal Attorney not only to punish crimes which have been committed, but to prevent intended crimes and to take the corresponding measures. The Swiss government thus stated that it approved the procedure of the Swiss Federal Attorney and thus also his order of 15th June, 1950."

147. On the same day, the Swiss Federal Attorney acted upon the application made of him on April 2, 1951. He stated, among other things:

> "In these circumstances it is doubtful *a priori* whether Interhandel is entitled in any way to file the present application and whether it could not be made solely by the banking firm H. Sturzenegger & Co.
>
> "The application, however, would also have to be refused, even if a subsequent declaration of consent from the banking firm H. Sturzenegger & Co. was produced.
>
> "1. There are absolutely no new circumstances. The fact that the American authorities wish to inspect the records of the banking firm Sturzenegger is exactly what gave rise at that time to the issue of the order

of seizure of the Swiss Federal Attorney because the banking firm is not identical with Interhandel. As the premises upon which the order was issued have not changed there is not the slightest reason today to countermand it.

"2. Furthermore, there is just as little reason to modify the order of 15.6.50 in the sense of splitting the material seized into secret and non-secret documents, which you request in your contingent application. Not only would there be no guarantee in the procedure which you propose how the banking firm H. Sturzenegger & Co. would make the division of the documents into secret and non-secret but the possibility would also have to be taken into account that Mr. Sturzenegger would be placed under pressure either by Interhandel or by the court. We therefore also refuse a modification of our order of 15.6.50 in the sense of your contingent application.

"3. On the other hand we are prepared to release individual documents proved to be indispensable for the suit, insofar as explicit statements are produced for each one of these documents by all the parties having

2825 an interest in them (banking firm H. Sturzenegger & Co., its clients and other individuals or juridical persons participating), from which it should by clearly evident that there is neither a violation of Art. 273 St. GB (economic espionage) nor of Art. 47 of the Bank Law (bank secrecy). The Office of the Swiss Federal Attorney explicitly reserves itself the right to refuse to release individual documents without stating grounds for this."

148. On July 17, 1951, both plaintiff and the Sturzenegger Bank filed an appeal with the Head of the Department of Justice and Police from the Swiss Federal Attorney's decision of June 25, 1951. On September 6, 1951, this appeal was rejected because it was filed more than thirty days after the seizure order of June 15, 1950, but President von Steiger nevertheless stated:

"But even supposing that the formal requirements for entertaining the complaint were given, it could yet not be sanctioned. When it issued its order of

the 25th June, 1951 which was communicated [to plaintiff's Swiss lawyer] the Department examined and endorsed the legality of the confiscation. We refer to the considerations contained in that Order."

2826 CONCLUSIONS.

1. The burden is upon plaintiff to show good faith in its efforts to comply with this Court's order of July 5, 1949 to produce the papers of Sturzenegger et Cie. for inspection by the Government.

2. The test of whether plaintiff's efforts were made in good faith is whether plaintiff made the efforts which a reasonable man would make who desired to achieve effective compliance with this Court's order.

3. In the opinion of the Master, the plaintiff has sustained the burden of proof placed upon it and has shown good faith in its efforts in accordance with the foregoing test.

4. There is no proof, or any evidence at all of collusion between plaintiff and the Swiss Government in the seizure of the papers herein. The Swiss Government did not, as charged, authorize their inspection and later retract the authorization. The Swiss diplomatic note of November 29, 1948 authorized the taking of plaintiff's, not Sturzenegger & Cie's deposition in Switzerland and the use of documents as an incident thereto. It did not refer to an inspection of documents en masse at all; the project of an inspection of the Sturzenegger documents was not formulated, or at least not exteriorized until January 18, 1949 when the Government filed its Motion to Inspect.

5. There is nothing to show the Swiss Government relaxed its laws, still less its Constitution at plaintiff's behest. When it found its authorization covering plaintiff's deposition was being interpreted to cover a mass inspec-

tion of papers of a Swiss bank in Switzerland, in violation of Swiss law, as it saw it, the Swiss Government seized the documents under its preventive police power. Although the experts on Swiss law differed about it, the better view is that such preventive police power

2827 existed in the circumstances herein and there is a legal basis for its exercise (from the Swiss viewpoint) to prevent imminent violations of Article 273 of the Swiss Penal Code and Article 47 of the Bank Law, as well as Article 271 of the Penal Code. This is substantiated by the Swiss Government's diplomatic note of January 10, 1951, and the decisions of June 25, 1951 and September 6, 1951. A foreign government's construction of its own laws is entitled to great weight.

6. The fact that the Swiss Government permitted inspection of plaintiff's documents under Article 271, but refused inspection of Sturzenegger's papers, has, *per se*, no bearing on plaintiff's good faith.

7. The plaintiff made substantial efforts to secure production of the documents both before and after the seizure. It took the means which seemed most likely in its opinion to succeed. Whether other or different efforts might have been successful is conjectural; in any event a mistake of judgment, if found, is not chargeable against plaintiff in an inquiry into its good faith.

8. It is not reasonable that, faced with the threat of sanctions, including possible dismissal of its suit, plaintiff should make only perfunctory efforts, or, as the Government claims, no real efforts at all. Hence, the various examples of plaintiff's so-called successful efforts cited by the Government,—see items 1-9 on pages 134-136 of Special Master's Opinion of December 4, 1951—do not appear persuasive by contrast. They do not show Swiss governmental action inconsistent with its seizure order, nor anything bearing adversely on plaintiff's good faith.

9. Obtaining adequate waivers would not appear to have

been practically possible, nor at any time to offer a solution to the problem of the production of the papers.

2828 10. The necessity under Swiss law for the waiver by parties—multiple or otherwise—who own the secrets contained in the Sturzenegger papers demonstrates that a holding of *prima facie* control of such papers by the plaintiff, within the terms of Rule 34 F. R. C. P., does not fully resolve the problem. If the intervention of a third party, an independent agent, is necessary to produce the papers, then by definition plaintiff has no control over their production.

Findings on Re-opening

1. That in the case of Bank Waedensvil, plaintiff, vs. McGrath, defendant, Civil Action No. 1902-49, in the District Court here, the plaintiff, a Swiss bank located at Zurich, Switzerland, is maintaining an action under Section 9(a) of the Trading with the Enemy Act to recover, amongst other things, shares of stock in an American corporation known as Kalio, Inc.

2. That District Judge Letts signed an order requiring the plaintiff-bank to produce for inspection by the defendant certain papers, documents and records described in said order.

3. That the plaintiff-bank endeavored to arrange with the Swiss authorities for permission to have the defendant inspect such papers in Switzerland, but failed to accomplish this objective.

4. That certain papers were produced by the plaintiff-bank in this country for inspection by the defendant on November 29-30, 1951 and on January 3, 1951, with the knowledge of the Swiss authorities, having been previously seen by such authorities in Switzerland.

5. That the plaintiff-bank claims to be the sole owner of the vested property, and it is maintaining its civil action in its own right.

6. That the inspected papers related to certain 1940
transactions, involving the purchase of the shares by the
Bank,
2829 and to the background of some of said shares, and to
the blacklisting of the plaintiff-bank, its attorney
and subsidiaries, as the result of such transactions.

7. That the inspected documents belong to or reflect transactions of the plaintiff-bank itself, its wholly owned subsidiary, Friedberg A. G., (a Swiss corporation), another Swiss corporation, named Tristat, A. G., whose stock Friedberg A. G. purchased for the plaintiff-bank, a German named Lieberknecht, and Dr. Max Schneider, who was an officer and attorney for the Bank and attorney for Lieberknecht.

8. The papers produced do not appear to relate to third parties, such as customers of the Bank, not connected with Lieberknecht or his corporations, or the Bank's corporations or its officers or agents.

9. The evidence adduced by the Government failed to show that the papers would come within Article 47 of the Swiss Bank Law, dealing with bank secrecy, it being clear that the Bank was acting for itself, not for a customer or depositor and hence was revealing its own secrets—not others' and without hazard to others' rights under Article 273; and it failed to show that the papers contain anything proscribed by Article 273, dealing with economic espionage.

10. The Swiss officials who saw the papers in Switzerland warned the plaintiff-bank and its attorneys against any possible violations of these laws by disclosing their contents to the American Government; and plaintiff-bank and its attorneys never at any time received any assurances from the Swiss officials that they would not be committing a Swiss crime if such papers were produced for inspection, nor did such officials ever state that they were "waiving" any Swiss laws or portions of laws.

11. Revelation of secrets of third parties in the docu-

ments was avoided by blocking out parts of papers containing such secrets.

2830 12. The papers were produced either by the Bank or by Dr. Max Schneider, acting for some of the parties named above.

13. The documents produced would fill one ordinary file cabinet drawer; they were on a restricted issue; and there was no evidence that they constituted more than a very small portion of the Bank's records.

Conclusions on Re-opening.

1. The evidence adduced on re-opening, as to the Waedensvil case, does not require any alteration in the Report herein or the Findings and Conclusions in support thereof, all of which are adhered to.

2. The Waedensvil Bank case, except in one respect, is not analogous to the situation involving the Sturzenegger Bank, either factually or legally. The one item of identity is that the Swiss Government did not grant permission in either case under Article 271 for the inspection of the bank's records in Switzerland by representatives of the American Government.

3. The Bank Waedensvil was acting in its proprietary capacity,—for itself, and not for its customers—in the Lieberknecht-Tristat-Friedberg transactions, and no risk of breach of secrecy under Article 273 and Article 47 was shown.

4. The papers it produced pursuant to Judge Lett's order were either its own or those of its subsidiary or were obtained from the attorney for other persons or corporations involved. There was no showing that any of the papers were produced against the will of their owner, or the owner of the so-called "secret" within the meaning of the Swiss secrecy laws.

5. The evidence shows no violation of Article 273 (economic espionage) or Article 47 (bank secrecy).

2831 6. No "waiver" of the Swiss secrecy laws has been shown.

7. The Swiss Government is not shown to have acted inconsistently and the efforts of the Bank Waedensvil to comply with this Court's order were not essentially different from those of the plaintiff.

8. The tacit permission to disclose in the one case and the refusal in the other are attributable to basic differences in the circumstances of the two cases and do not indicate collusion.

9. The facts in the Waedensvil case do not suggest error in prior conclusions herein as to Swiss law, in particular Articles 271 and 273, Article 47, or as to the preventive police power.

/s/ WILLIAM J. HUGHES, JR.,
Special Master.

July 9, 1952.

* * *

2834 Filed August 26, 1952. Harry M. Hull, Clerk.

Opinion of Master on Government's Motion for Additional Production of Documents Under Rule 34.

This Motion filed February 13, 1952 resulted in a Memorandum in Opposition filed April 8, 1952 (time extended by agreement of parties) and a hearing July 8 and 9, 1952. The motion asserts that although Chemie produced some 41,072 documents for Governmental inspection pursuant to this Court's Order of July 5, 1949, a large number of Chemie's documents have not as yet been produced and this is what the motion is designed to achieve.

I feel that a *prima facie* showing of existence and non-production has been made as to the documents listed as "X Number Missing" in Exhibits 1, 2 and 3 of Mrs. Hoffman's affidavit attached to the Government's Motion. It would appear that when the Swiss Compensation Office examined Chemie's documents from November 1945 to February 1946 it imprinted upon certain papers examined a serial number, the

2835 so-called "X number." Not all papers examined were so numbered. This is clear from the fact that the Government admits a total of 41,072 documents was produced by Chemie pursuant to Chief Judge Laws' Order of July 5, 1949; however, the highest "X number" found was 16,660. (Mrs. Hoffman's Affid. p. 2). Hence the S. C. O. did not, apparently, number even as many as half the documents it examined, if in fact it examined all of Chemie's documents during the 1945-1946 investigation.

The Government's point is that of those documents the S. C. O. did in fact examine and number with "X numbers," some 16,660, Chemie has produced only 6,831 "X numbers" leaving a balance of 9,829 documents duly "X numbered" by the S. C. O. which Chemie has not produced. The Government's expert has made a painstaking analysis of the documents Chemie produced and shows the missing documents in the first column of Exhibits 1, 2 and 3 of Mrs. Hoffman's affidavit under the heading "X numbers missing." An analysis of these exhibits shows the absence of individual documents, or blocs of 2, 3, 4 or 5, or sometimes as many as a series of 25, 50 or even 100 or more.

Chemie contends many missing numbers are mere carbons of papers already numbered and produced and cites various examples in its counsel's letter of July 17, 1952. In its memorandum of April 7, 1952 it gives various explanations, suggesting that there is a mistake somewhere in the Government's argument, and that there are individual reasons for the omissions listed in Exhibits 1, 2 and 3, *supra*. I think the Government is entitled to such explanations document by document, or number by number, as listed in the above exhibits.

2836 The above ruling is limited to paragraph 1 of the Government's Motion and the lists of missing documents embodied in Exhibits 1, 2 and 3 of Mrs. Hoffman's affidavit. As to the documents mentioned in paragraph 2 of the Motion and listed in Exhibit 4, the Government claims Chemie stamped its documents numerically with

an "R-Stamp." Thousands of "R-stamped" documents have been produced but thousands too are missing, as listed in Exhibit 4. The difficulty is that the Government's present showing is limited to an inference that certain documents exist and are missing because certain "R-numbers" are not found on the documents produced. Assuming their one-time existence, there is no showing the missing documents were part of Chemie's files as of any given date, let us say since the war, or the date suit was filed, or the date of Chief Judge Laws' order, or on any other particular date. For all we know, the document may have been "R-numbered" upon its receipt or creation but may have been destroyed in the usual course of business and without culpability at or about that time or during the intervening years. I conclude, therefore, that as to the missing documents listed in the first column of Exhibit 4 to Mrs. Hoffman's Affidavit entitled "R-stamp missing" a *prima facie* showing of non-production has not been made.

The same type of objection appears to apply to the documents referred to in paragraphs 3 to 5 inclusive in the Government's Motion and in Mrs. Hoffman's Affidavit at p. 6-10, with the exception of the correspondence with the Swiss Political Department referred to in par. 4 A(1) of Mrs. Hoffman's Affidavit. Chemie's Memorandum of April 7, 1952 apparently admits the existence of this correspondence but

2837 claims it is privileged. Sufficient data has not been furnished as to the nature of the correspondence to permit an intelligent examination of the question of privilege.

As to the items shown *prima facie* to exist and not produced, Chemie in its Memorandum of April 7, 1952 contends the burden is on the Government to prove relevancy. I think that once it is shown given documents are in the possession of Chemie the Master is foreclosed from inquiring into relevancy by Chief Judge Laws' opinion of

June 23, 1949 holding that any and all Chemie's papers are relevant for Government inspection.

The parties will agree upon a form of order, in default of which a further hearing will be had.

/s/ Wm. J. Hughes, Jr.,
Special Master.

August 25, 1952.

2838 Filed September 9, 1952. Harry M. Hull, Clerk.

Objections to Master's Report and Memorandum in Further Support of Defendants' Motion to Dismiss the Complaint for Failure to Produce the Papers of H. Sturzenegger & Cie., and in Opposition to Plaintiff's Motion to Be Relieved From Producing the Sturzenegger Papers.

* * * *

2842 (b) *Until 1936 Chemie was a desk drawer corporation of Sturzenegger and although Chemie then acquired its own premises adjoining Sturzenegger, the intimate relationship in the conduct of their business remained unchanged.*—From the time Chemie was organized in 1928 until 1936 it was apparently a desk drawer corporation in the Greutert office. Greutert, Schmitz and Roesch (the latter two admittedly Farben men) were the predominant members of its Board (Swiss G. Rept. A, [R. 1735]). Chemie had no office of its own and its affairs were conducted in the Greutert premises (St. Dep. [R. 6444]). Greutert charged Chemie a yearly fee for

2843 management of its business (C-11130,[5] December 31, 1935). There are dozens of instances in its files of letters from Greutert to Chemie, and the replies of Chemie, dictated by the same employee of Greutert, often on the same day (e.g., C-9616, C-9617, June 27, 1931; C-9637,

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5 Citations of this nature refer to documents produced by plaintiff from its files for inspection and copying by defendants.

C-9638, July 21, 1931; C-9837, C-9840, January 13, 1932; C-9851, C-9852, January 23, 1932). After 1931, when Mr. Sturzenegger entered the employ of the Greutert firm, it was he who dictated such letters back and forth (e.g., C-9645, July 23, 1931; C-9652, July 25, 1931; C-9841, January 14, 1932; C-9844, January 16, 1932).

In September 1936 Chemie moved to adjoining premises of its own, with a backdoor passage between the two (St. Dep. [R. 6454, 6622-6623]). But matters remained unchanged. In 1937 they procured a 15-year contract for a joint and interconnecting telephone switchboard (D-4423, January 1937). Though Mr. Sturzenegger did not join Chemie's board or employ until 1940, he continued to dictate Chemie's mail and write memoranda for Chemie (e.g., D-11793, December 10, 1936; C-8623, February 4, 1937; C-8637, October 3, 1938). He continued to reply, often on the same date, to correspondence from Greutert which he had himself dictated (E.g., C-11357, C-11356—October 5, 1936). From a printed interoffice route slip on Chemie's incoming mail during this period, it appears that Chemie's mail was referred to the attention of five people, two of them members of Greutert but not of Chemie. One of these was Mr. Sturzenegger who often by initials or comments indicated that he had seen the letter (e.g., D-5273, June 21, 1937; D-4814, March 16, 1938; D-5311, December 12, 1938; B-1104, February 20, 1939).

Though he was not a member of its board, Mr. Sturzenegger represented plaintiff in its business (St. Dep. [R. 6464-6472]). The two firms have had joint personnel (St. Dep. [R. 6451, 6489-6491, 6556, 6619]). Their files have been in the possession of each other (St. Dep. [R. 6618-6621]; St. affidavit, February 1, 1950, [R. 2215]). Sturzenegger's documents appear in Chemie files (e.g., D-12876, December 18, 1937; D-13282, August 1, 1940; D-12535, September 14, 1939; D-13228, June 15, 1940; enclosure to D-13292, April 30, 1940; D-13314, September 14, 1940). And there are notes on plaintiff's

documents stating that copies are in Sturzenegger's files (e.g., C-4470, January 6, 1936). They jointly used an office in Lucerne for storage of their papers (St. Dep. [R. 6611-6620, 11236]).

Most of Chemie's securities are on deposit with Sturzenegger (Swiss G. Rept. B, [R. 1785]; St. Dep. [R. 6689]). Relations have been so close that, Mr. Sturzenegger testified, he might have discussed with members of plaintiff a request he received from Berlin in 1943 through the German Consul in Basle, to send sfr. 1,000,000 to Spain for I. G. Farben (St. Dep. [R. 7132-7133]).

* * *

Apparently Swiss secrecy is not entirely inflexible. Apparently, too, the Swiss executive authorities desire to take to themselves absolute discretionary authority to determine which of the documents this Court ordered produced, are "indispensable" to the suit pending here.

Lastly, we call to the Court's attention a recent instance in which the Swiss Government consented to the production in this Court of papers of a Swiss bank, which is a plaintiff in a pending suit under the Trading with the Enemy Act. The case is *Bank Waedenswil* v. *McGranery*, Civil Action No. 1902-49, 1903-49. The Master's Supplemental Opinion and Findings on Reopening deal with this matter. The Master makes voluminous findings to show the consistency of the Swiss Government, yet he recognizes that with the Swiss Government's consent bank books and papers were produced under an order of this Court relating to a circle which included the Bank's subsidiaries, affiliates, agents and representatives and Lieberknecht, the German with whom the allegedly cloaking relationship existed, and his companies and associations (Opn. on Reopening, pp. 8-11; Findings on Reopening Nos. 4, 7, Fdgs., pp. 28-9). The Master concluded that the basis for the Swiss Government's different treatment of the Waedenswil and Sturzenegger papers lies in the fact that "Waedenswil was acting in its proprietary capacity, in its own right and not

for customers and depositors, i.e., as a bank in the ordinary sense, in producing its papers." (Opn. on Reopening, p. 18; Conclusion on Reopening No. 3, Fdgs., p. 30). By this same test, at least all the papers of Sturzenegger, his agents and servants, his subsidiaries, his consortia and secretariats should have been allowed by the Swiss Government to be produced.

This outline of the various conflicting and inconsistent positions taken by the Swiss Government with respect to the secrecy laws and the secrecy of the Sturzenegger papers, we believe, serves to remove any hesitancy which a court might entertain in following the rule of law that an American court will not permit the secrecy laws of a foreign nation, not known in this country, to obstruct the rules of our courts.

2871 We submit that under all the legal authorities and precedents set forth above, the Swiss secrecy laws and the Swiss executive's action under those laws cannot excuse the nonproduction of the Sturzenegger records, if the Trading with the Enemy Act is to be enforced and American principles for investigation into the truth observed. Chief Judge Laws' question—whether a foreign nation "has the authority to defeat the customary procedures of United States Courts" must be answered in the negative.

[Signed by counsel for defendants]

September 8, 1952.

* * *

Exhibit I.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BANK WAEDENSWIL, Address: Waedenswil, Switzerland,
Plaintiff,
v.
J. HOWARD MCGRATH, Attorney General of the United States, as Successor to the Alien Property Custodian, Address: Department of Justice, Washington, D. C.,
Defendant.

CIVIL ACTION No. 1902-49

THEODORE H. THESING, Address: Suite 1018 Dupont Circle Building, Washington, D. C., and 2 East 54th Street, New York, N. Y.,
Plaintiff,
v.
J. HOWARD MCGRATH, Attorney General of the United States, as Successor to the Alien Property Custodian, Address: Department of Justice, Washington, D. C.,
Defendant.

CIVIL ACTION No. 1903-49

AFFIDAVIT

DISTRICT OF COLUMBIA: SS:

Samuel Z. Gordon being duly sworn, deposes and says:

I am a Chief Trial Attorney in the Office of Alien Property, Department of Justice, and I am one of the attorneys for the defendant in Civil Action No. 1902-49 herein. . . .

* * *

3005 . . . A true copy of a letter dated June 19, 1952 with 5 enclosures from the Acting Legal Adviser of the Department of State to Assistant Attorney General Harold I. Baynton is annexed hereto as Exhibit 3. . . .

* * *

/s/ SAMUEL Z. GORDON.

[Sworn to June 25, 1952.]

3006 **Exhibit 3.**

In reply refer to
GEA

June 19, 1952.

My dear Mr. Baynton:

Reference is made to your letter of June 10, 1952, addressed to Mr. Matthews, in which you request a statement of the present views of the Department of State on the applicability of the Washington Accord to property subject to vesting under the Trading with the Enemy Act.

The position of this Government, as stated in my letter of March 21, 1949 to Assistant Attorney General Bazelon, is unchanged and constitutes the firm view of the Department of State.

I enclose copies of four notes, dated June 18, 1947, April 21, 1948, July 26, 1948, and October 12, 1948, from the Department of State to the Swiss Legation in Washington. These notes state in detail the position of this Government on the matters discussed by Mr. Tate and raised by the motion papers in *Bank Waedenswil* v. *McGrath*, transmitted by you.

I also enclose copies of a resolution on the same subject adapted by the Assembly of the Inter Allied Reparations Agency at Brussels on January 14, 1949.

You are authorized to present this letter and its en-

closures, as well as my letter of March 21, 1949, to appropriate judicial tribunals.

Sincerely yours,

JACK B. TATE,
Acting Legal Adviser.

Enclosures:

1. Four notes.
2. Resolution.

THE HONORABLE HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property,
Department of Justice,
Washington, D. C.

3007 MEMORANDUM.

The Department of State refers to the aide-memoire of the Legation of Switzerland of June 4, 1947 (R-300-5b Sch/md) regarding Internationale Handels und Industriebeteiligungen A. G. (Interhandel), formerly known as I. G. Chemie, Basle, Switzerland.

The question of the disposition to be made of this case is one which under the terms of the Accord and Annex thereto must be dealt with through the Joint Commission. Under these circumstances the Government of the United States in conformity with the obligations it undertook under the Washington Accord of May 25, 1946, is unable to consider the questions raised in the reference note in any other forum than the Joint Commission.

During the course of the negotiations leading to the Accord of May 25, 1946 the United States representatives made clear that a decision on the Interhandel case can have no effect of any settlement of or decision on the vesting action by the Alien Property Custodian of February 1942 of the stock of the General Aniline and Film Corpo-

3007

ration. The United States Government has not changed its views in this matter.

Department of State
Washington, June 18, 1947.

3008 AIDE-MEMOIRE.

The Department of State desires to call the following matter to the attention of the Government of Switzerland.

The Attorney General of the United States has called to the attention of the Department the importance of the problem arising out of the inability of the proper authorities of the United States to make any investigations in Switzerland relating to property located in the United States and vested or subject to vesting by the Office of Alien Property of the Department of Justice. The points made by the Attorney General of the United States are as follows:

1. The question of the relevance of the Swiss-Allied Accord of May 25, 1946 to the problem of investigation.

The comments of the Attorney General on this point are as follows:

"The Swiss Legation, in its aide-memoire of October 1, 1947, has taken the position that the Washington Accord of May 25, 1946, gives the Swiss Compensation Office exclusive jurisdiction to make investigations 'of persons and companies on Swiss territory'. The incident which gave rise to the aide-memoire did not concern property in the United States,

3009 but the Swiss Compensation Office has taken the same position with respect to cases which involve property located in this country which has been vested as German. In one such case, all of the Swiss parties directly concerned having consented to an examination of evidence in Switzerland, representatives

of the Department of Justice journeyed to that country to make the agreed upon investigation. They were there informed by an official of the Swiss Compensation Office that the provisions of the Accord prohibit the making of investigations in Switzerland by this Department, and as a result the investigation could not be made. Because of the position taken by the Swiss Government this Department has also been compelled to postpone several other important investigations.

"The position of the Swiss Government is without foundation. The Washington Accord obligates the Swiss Compensation Office, which has jurisdiction over the assets in Switzerland of firms blocked under Swiss law, to investigate the status of property in Switzerland suspected of being German-owned, but does not provide that such investigations are to be made by the Swiss Compensation
3010 Office exclusively. German assets located outside of Switzerland are not within the scope of the Accord, and the Accord does not give the Swiss Compensation Office the authority to conduct investigations involving such property. Property vested by the United States, and the investigations this Department desires to conduct with respect to such property, are governed only by the Trading with the Enemy Act, and are wholly unaffected by the Washington Accord and the related Swiss statutes with respect to the blocking of German property by Switzerland."

The Swiss Government will note that the position stated by the Attorney General is and has been the consistent position of the Government of the United States since May 25, 1946 and that, concurrently with the signing of the Accord of May 25, 1946, officials of the Department of State stated to officials of the Swiss Delegation that the problem of property in the United States held through Swiss in-

stitutions allegedly on behalf of German nationals was not subject to the provisions of the Accord.

2. The relation of the problem of investigations to judicial action in courts of the United States.

3011 The views of the Attorney General on this matter are as follows:

"The attitude of the Swiss Government, if maintained, will be brought to the attention of the United States courts. A fundamental principle underlying the procedure followed in the United States district courts is that each party to a lawsuit shall have the right to a full inspection of all relevant documents before trial, in order that all pertinent evidence may be brought before the courts. In the event that a party is not permitted by his adversary to inspect relevant books, records or other documents, an appeal may be made to the court for appropriate sanctions, including the entry of a judgment dismissing the suit. It is our intention, in the event that the Swiss Government persists in its refusal to permit this Department to conduct investigations in Switzerland, to appeal to the courts for the dismissal of suits instituted by Swiss plaintiffs to recover vested property. The fact that Swiss citizens are the plaintiffs and must carry the burden of proof in these cases is a factor which the courts will consider when ruling on motions to dismiss filed by this Department."

3012 3. The effect of this problem on the possibility of administrative returns and on the judicial remedy now provided by the United States legislation.

The views of the Attorney General on this matter are as follows:

"The continued refusal by the Swiss Government to permit investigations to determine the status of vested property will also prevent the Office of Alien Property from making administrative returns based on claims

filed by Swiss citizens and can result in Swiss nationals losing the right to maintain suits for the return of vested property. Such suits are instituted with the consent of the United States. This consent is an act of grace on the part of this Government, revocable at any time and subject to such conditions as the United States desires to impose. The continuance of the authorization by this Government to be sued by aliens is considered to be conditioned upon the requirement that the aliens will comply with the procedures adopted for the conduct of litigation in our courts and that the Governments to which the aliens owe allegiance will not frustrate the applicable laws of the United States.

The Swiss position

3013 leaves the Department of Justice without means of obtaining information vital to the defense of lawsuits instituted by Swiss citizens with the consent of the United States. This Government cannot be expected to continue to consent to be sued by Swiss citizens if the Accord is employed without warrant by the Government of Switzerland to deny to the United States its rights as a defendant."

In transmitting these views of the Attorney General of the United States to the Government of Switzerland, the Department of State reiterates its desire, constantly stated over the course of the past several years, that problems relating to the Accord of May 25, 1946 and to questions considered either by the Swiss or the United States authorities to be relevant to the Accord may be amicably and expeditiously resolved.

Department of State,
Washington, April 21, 1948.

3014

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of Switzerland, and refers to the Minister's note of May 4, 1948, with enclos-

ures, concerning the return of assets in the United States claimed by I. G. Chemie. In the Minister's note attention is called to a decision of the Swiss Authority of Review "declaring Interhandel [I. G. Chemie] a Swiss concern."

The Department of State has now consulted with the Department of Justice and the Treasury Department, and desires to communicate the following as the final and considered view of this Government on the matter.

As representatives of the Swiss Government have heretofore been informed, this Government considers the decision of the Swiss Authority of Review as having no effect on the question of the assets in the United States
3015 vested by this Government and claimed by I. G. Chemie.

The decision of the Swiss Authority of Review was made on an appeal of I. G. Chemie from a provisional blocking ordered by the Swiss Compensation Office pursuant to the Swiss Federal Council Decree of February 16, 1945, and not on an appeal taken under the terms of the Washington Accord of May 25, 1946. The question of whether the assets in Switzerland held by I. G. Chemie are German assets which come within the provisions of the Washington Accord is still before the Joint Commission. Plainly the decision of the Swiss Authority of Review, when made as a result of an appeal under a Swiss Decree rather than as a result of an appeal by the Joint Commission or by an interested party under the Accord, is not binding upon the United States, even as to the status of I. G. Chemie assets in Switzerland.

In any event, the Washington Accord governs only property in Switzerland owned or controlled by Germans in Germany, the proceeds of which are to be used as specified in the Accord. Assets subject to vesting in the United States, whether or not they have been vested, are clearly without the scope of the Accord. The decision on
3016 I. G. Chemie's claim to assets in the United States is solely one for the Attorney General under Section

32 of the Trading with the Enemy Act, as amended (Public Law No. 322, 79th Congress, 2nd Session, 50 U. S. C. App. Sec. 32), or for the United States courts if suit should be instituted under Section 9(a) of the Trading with the Enemy Act.

The views of this Government were clearly stated in the negotiations leading to the Accord of May 25, 1946. Thus in the memorandum of June 18, 1947 replying to the Aide-Memoire of the Swiss Legation of June 4, 1947 raising the same point as now raised, the Department stated:

> "During the course of the negotiations leading to the Accord of May 25, 1946 the United States representatives made clear that a decision on the Interhandel [I. G. Chemie] case can have no effect on any settlement of or decision on the vesting by the Alien Property Custodian of February 1942 of the stock of the General Aniline and Film Corporation. The United States Government has not changed its views in this matter."

In its Aide-Memoire of April 21, 1948, the Department

3017 also expressed agreement with the view of the Attorney General of the United States that "German assets located outside of Switzerland are not within the scope of the Accord. * * * Property vested by the United States * * * [is] wholly unaffected by the Washington Accord * * *." The Department further pointed out that this has been the consistent view of the Government of the United States since May 25, 1946, and that, concurrently with signing of the Accord this understanding was stated to, and understood by, Swiss officials.

This Government's consistent interpretation of Article IV of the Accord has been that it relates only to the establishment of a procedure for the unblocking of Swiss assets in the United States; and, as is true of the entire Accord, it in no way relates to assets in the United States vested or vestible under the Trading with the Enemy Act. This

interpretation follows the intent of the negotiators of the Accord. It will be recalled that the implementation of this Article took the form of an agreement between the Treasury Department

3018 and the Swiss Minister of Finance for the defrosting of the frozen Swiss assets in the United States. Moreover, under this agreement the Swiss Government was precluded from certification of assets in the United States deemed by this Government to be German tainted, or otherwise ineligible for certification, even though claimed by enterprises organized in Switzerland.

It is therefore clear that no clause of the Accord touches upon or affects in any manner assets or properties in the United States in which a direct or indirect German interest is asserted and the status of such assets or properties is not subject to any of the procedures of the Accord. The decision of the Swiss Authority of Review is not relevant to the vesting of the property in question and the contention that the assets claimed by I. G. Chemie in the United States should be released must therefore be rejected.

Department of State.
Washington, July 26, 1948.

3019

The Secretary of State presents his compliments to the Honorable the Minister of Switzerland and has the honor to refer to the Legation's note of September 7, 1947 concerning assets in the United States claimed by I. G. Chemie.

After careful consideration of the points made in the Legation's note, this Government reaffirms its views stated previously. The question of the return of the property formerly owned by I. G. Chemie and now vested under the Trading with the Enemy Act is wholly beyond the scope of the Washington Accord of May 25, 1946, and is governed solely by the statutes of the United States. The question is far beyond any permissible construction of the Accord and is therefore not subject to the arbitration clause of the Accord.

There follow certain detailed comments on the points
3020 raised in the Legation's note, which should not, however, be taken as limiting the finality and generality of this Government's firm views on the question, both as expressed at this time and on prior occasions.

The first point raised by the Legation is to the effect that the decision of the Swiss Authority of Review recognizing I. G. Chemie as a Swiss corporation, is binding upon the signatories of the Washington Accord. The point is of no significance with respect to the instant claim by I. G. Chemie. That claim relates to the return of property located in the United States and subject to this Government's powers of seizure, and, as has been made clear by this Government, such property is nowise subject to the Accord. However, since the Legation seems to stress that the Authority acted under the Accord, it may be pointed out that the Legation is in error.

The proceeding before the Authority of Review was not one under the Accord, but was rather an appeal by Chemie from the provisional blocking under the Swiss Federal Council decree of February 16, 1945. The appeal by Chemie was, indeed, filed before the Accord was signed.

3021 The Legation is apparently of the view that the proceeding became one under the Accord by reason of certain "collaboration" between the Joint Commission and the Swiss Compensation Office. This "collaboration", however, was no more than an effort of the Joint Commission to secure information with respect to I. G. Chemie, pursuant to a separate proceeding, under the Accord, initiated by the Commission on July 25, 1947. The Joint Commission was not involved in the proceedings before the Authority. Thus, in response to the offer of the Authority to intervene in the appeal before it, the Joint Commission wrote that the Chemie case under the Washington Accord was still before the Commission and that there was no basis for the Commission to appear before the Authority

pursuant to the Accord. In conclusion, it was said, on behalf of a majority of the Commission, that "The appeal presented [by I. G. Chemie] can, naturally, have no effect on any proceedings, undertaken pursuant to the Washington Accord, on the matter by the Joint Commission." This disposes of any possible contention that the decision

3022 of the Authority of Review has any effect upon the signatories of the Washington Accord.

The remaining points raised by the Legation relate to the question whether any decision under the Accord can affect the disposition of property which was within the power of the United States to seize as enemy property, i.e., vested or vestible property under the Trading with the Enemy Act.

The text of the Accord disposes of this question. If there were any doubts as to the meaning of the words of the Accord, they would be entirely resolved by its implementation since signature, the record of the negotiations, and the limitations on the authority of all the negotiators for the Allies, and particularly on the authority of the negotiator for the United States. These are all confirmatory of the limitation of the applicability of the Accord to German property within Switzerland, subject to the control of the Swiss Government, and to the exclusion of German property outside Switzerland, property subject to the seizure powers of the Allies.

The text of the Accord lends no support to the

3023 assertion that decisions of the tribunals created or mentioned in the Accord are to affect property in the United States, vested or not. On its face the Accord relates only to property "in Switzerland". There are repeated references, in the Accord, to property "in Switzerland", as well as references to persons in Switzerland administering German property, to persons in Switzerland indebted to Germans, and to the liquidation of property in Switzerland.

The only (and therefore exclusive) reference in the Accord to assets in the United States or to assets outside of Switzerland, is found in Article IV. This article provides in part that "The Government of the United States will unblock Swiss assets in the United States." There has been no doubt since prior to the negotiations for the Accord but that such language refers only to the foreign funds subject to the freezing controls and not at all to the divesting of vested property. This limited meaning of the word "unblock" was well appreciated by the Swiss negotiators for the

3024 Accord, who repeatedly expressed their concern over the freezing of Swiss funds in the United States. The term "unblock" has and has had a clear and precise meaning.

The Department has already pointed out that confirmation of the meaning of "unblock", as limited only to frozen property, lies in the terms of the agreement between the Treasury Department and the Swiss Minister of Finance of November 1946 for the defrosting of frozen assets in the United States.

Even aside from explicit views communicated during the negotiations, there are many statements relevant to the question of the applicability of the Accord in the record of the negotiations. Among these are numerous indications that the participating Allied governments, as successors to the legal authority of the German Government, were directing themselves only to the subjection to reparations of German property which, because of its location in Switzerland, was beyond Allied control. They were not concerned with German property outside of Switzerland, such property being fully within the control

3025 of the Allied Governments. As in the case of the Accord itself, there are numerous references, in the negotiations, to German property in Switzerland and none to German property outside of Switzerland. The negotiators moreover made it clear that their concern over

assets subject to the control of the Allies was limited to Swiss funds which had been frozen in the United States.

The limitations on the collective authority of the negotiators for the United States, the United Kingdom and France are further support for this interpretation of the Accord. The negotiators, who signed on behalf of all the countries which are now members of the Inter-Allied Reparations Agency, were carrying out the terms of the Paris Agreement on Reparation of January 24, 1946. Article 6, paragraph C, of the Agreement states that

> "German assets in those countries which remained neutral in the war against Germany shall be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by these countries."

3026 In the same Article, in paragraph A, it is stated

> "Each Signatory Government shall, under such procedures as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control . . ."

It can thus be seen that the Agreement explicitly limited the authority of the negotiators to German assets in Switzerland and excluded from their authority any attempt to dispose of German assets already subject to the seizure powers of the countries signatory to the Agreement.

The authority of the negotiator for this Government, moreover, was similarly limited. As the Legation is aware, the statutes of the United States regulating the seizure and disposition of enemy property provide that claims for a voluntary return of vested property may be filed by designated groups of aliens not hostile to the United States, and, if such claims should be rejected, that the courts may entertain suits by non-enemy owners for the return of the

property. The Accord was not intended to, and could not, under the constitutional
3027 laws of this Government, override these statutes. The return of vested property has been specifically regulated by the Congress and the Congress has only recently, in Public Law No. 896 of July 3, 1948, reenacted the mandate that German property shall not be returned to its former owners.

On the other hand, there has been no need, and no room, for an agreement that Swiss property in the United States should be released from vesting. This Government has not vested Swiss property but only ostensibly Swiss property, actually enemy property. The forum in which the question of Swiss or enemy ownership of such property is to be determined is governed by statutes enacted by the Congress.

The Legation points out that unvested property may be vested and thereby taken from the applicability of the Accord. The important distinction, however, is not between vested property and unvested property, but between property subject to the seizure power of the United States and property subject to the power of the Swiss Government. The former is not subject to the
3028 Accord, the latter is. The only property subject to this Government's power which is mentioned in the Accord is Swiss blocked property, and the arrangement with respect to such property, consistently with the above principles, leaves the determination of its enemy character exclusively to this Government. While the Accord provides that Swiss property is to be unblocked, it has been agreed that should this Government deem any of it to be enemy-tainted, the Swiss Government may not certify it for unblocking, and this Government need not unblock it.

In summary, the decision of the Swiss Authority of Review has no status under the Accord. If it had such status, it would still be limited by the applicability of the Accord itself, which has no effect on property which is within the

power of this Government to seize as enemy property. The suggestions of the last paragraph of the Swiss note under reference are in consequence completely unfounded and cannot be adopted,

It is trusted that the Legation will appreciate that these are the final views of this Government,

3029 arrived at after complete re-examination of the position expressed in the Swiss note of September 7, 1948.

Department of State,
October 12, 1948.
Washington.

* * *

3077 Filed December 31, 1952. Harry M. Hull, Clerk.

Motion of Defendants for the Production of the Original Books of Plaintiff I. G. Chemie.

The defendants, by their undersigned attorneys, respectfully move the Court:

A. For an order under Federal Rule 34 requiring plaintiff to produce, for inspection, copying, and photographing or microfilming by the defendants

(1) the original account books of I. G. Chemie;

(2) the 30 Chemie account books examined in the course of the investigation of the German character of I. G. Chemie by investigators of the Swiss Compensation Office in 1945 and 1946.

3078 2. For such other relief as may be just and proper in the premises.

Respectfully submitted,
[Signed by counsel for defendants]

* * *

3079 Points and Authorities in Support of Motion of Defendants for the Production of the Original Books of Plaintiff I. G. Chemie.

The points and authorities are as follows:

(1) Federal Rules of Civil Procedure, Rule 34.
(2) The attached affidavit of George H. Elkan.
(3) The order of the Court, per Chief Judge Laws, dated July 5, 1949.
(4) The Investigators' Report of the Swiss Compensation Office, September 24, 1947, on file herein as attachment B to an affidavit of David Schwartz, sworn to and filed January 18, 1949.

The instant motion seeks, first, the production of the original books of account of the plaintiff. The books which plaintiff produced in 1950 are not the original books of Chemie. This is demonstrated by the attached affidavit of George H. Elkan. The affidavit shows that after Chemie had entered its transactions in a set of books, it purchased fresh books, at varying times after the transactions were entered, and rewrote its books, compressing, in the case of its Journal

3080 for the period 1928-1945, what had been in 13 books into 11.

The motion, secondly, seeks the 30 Chemie books examined by the Swiss Compensation Office. Books to this number were examined by Swiss Compensation Office investigators in 1945 and 1946, in the course of the Swiss investigation of the German character of I. G. Chemie. Investigators' Report of the Swiss Compensation Office, September 24, 1947, p. 1, *supra,* on file herein. The investigators examined as well 110 books of Sturzenegger et Cie. *Ibid.* And, accordingly, the order of this Court of July 5, 1949 (p. 2, para. 1), required the production of "140 accounts books on the premises of I. G. Chemie and H. Sturzenegger & Cie., examined in the course of the investigation of the German character of I. G. Chemie by

investigators of the Swiss Compensation Office in 1945 and 1946." Plaintiff produced, however, only 25 books. Five books are plainly lacking and must be produced. And since it now appears that the books produced are not the original account books of Chemie, defendants do not know what the 25 produced books are. Defendants are therefore now moving not only for the original books, but also for the 30 books examined by the Swiss Compensation Office.

Respectfully submitted,

December 30, 1952.

[Signed by counsel for defendants.]

* * *

3081 Affidavit of George H. Elkan in Support of Motion of Defendants for the Production of the Original Books of Plaintiff I. G. Chemie.

WASHINGTON,)
DISTRICT OF COLUMBIA,) ss.:

GEORGE H. ELKAN, being duly sworn, deposes and says:

1. I am a consultant in the employ of the Office of Alien Property. I have made studies, as stated below in detail, of the books of account of I. G. Chemie and of Osmon which were produced by plaintiff, and of a sampling of correspondence folders of Chemie and Osmon. From the facts set forth below, it appears that the eleven volumes of Strazze-Journals produced by Chemie are not the Journals in which Chemie originally entered its

3082 transactions on the basis of its records and its correspondence. It also appears that the five volumes of Konto-Korrent-Buch-General Ledger produced, are based upon the Strazze-Journals produced by Chemie and not upon the Strazze-Journals in which Chemie originally entered its transactions on the basis of its records and correspondence.

2. The correspondence files I examined are listed in Exhibit 1. I examined the following 25 books of I. G.

Chemie, which, I am informed by counsel for defenda. are all the books of Chemie which were produced:

Title	Vol.	Period of Coverage
Strazze (Journal)	I	June 25, 1928-Aug. 28, 1930
Strazze (Journal)	II	Aug. 28, 1930-Dec. 23, 1931
Strazze (Journal)	III	Dec. 24, 1931-Dec. 31, 1932
Strazze (Journal)	IV	Dec. 31, 1932-June 30, 1934
Strazze (Journal)	V	July 4, 1934-June 30, 1936
Strazze (Journal)	VI	July 1, 1936-Dec. 31, 1937
Strazze (Journal)	VII	Dec. 31, 1937-Oct. 9, 1939
Strazze (Journal)	VIII	Oct. 9, 1939-Apr. 24, 1941
Strazze (Journal)	IX	Apr. 24, 1941-Nov. 16, 1942
Strazze (Journal)	X	Nov. 17, 1942-Aug. 31, 1944
Strazze (Journal)	XI	Sept. 1, 1944-Nov. 12, 1945
Konto-Korrent-Buch (General Ledger)	I	June 25, 1928-Dec. 31, 1931
Konto-Korrent-Buch (General Ledger)	II	Jan. 1, 1932-Dec. 31, 1934
Konto-Korrent-Buch (General Ledger)	III	Jan. 1, 1935-Dec. 31, 1937
Konto-Korrent-Buch (General Ledger)	IV	Jan. 1, 1938-Dec. 31, 1942
Konto-Korrent-Buch (General Ledger)	V	Jan. 1, 1943-Dec. 31, 1946
Effekten-Skontro (Security Ledger)	I	Oct. 30, 1928-Dec. 31, 1937
Effekten-Skontro (Security Ledger)	II	Jan. 1, 1938-Dec. 31, 1943
Effekten-Skontro (Security Ledger)	III	Jan. 1, 1944-Dec. 31, 1945
Dividenden-Konto (Dividend Book)	I	1929-1934
Dividenden-Konto (Dividend Book)	II	1935-1940
Kassabuch (Petty Cash Book)	I	Sept. 14, 1936-Dec. 30, 1944
Kassabuch (Petty Cash Book)	II	Jan. 1, 1945-June 30, 1950
Hauptbuch (Monthly Balance Book)	I	1928-1944
Hauptbuch (Monthly Balance Book)	II	1945-1949

3083 I also examined the following books of Osmon Werke, A. G.:

Title	Vol.	Period of Coverage
Strazze (Journal)	III	Jan. 1, 1933-June 30, 1944
Strazze (Journal)	IV	July 1, 1944-Nov. 5, 1945
Konto-Korrent-Buch (General Ledger)		Jan. 1, 1933-Nov. 5, 1945
Effekten-Skontro (Security Ledger)		1929-Nov. 5, 1945
Hauptbuch (Monthly Balance Book)	III	Jan. 1, 1933-Nov. 5, 1945

3. *Dates on Which the Produced Books Were Acquired by Chemie.*—Each of the 16 volumes of the Chemie Strazze-Journals and Konto-Korrent-General Ledgers bears on its inside front cover the printed label of the stationer who manufactured or sold the books. These labels show the name and address of the firm and related matters, and the stamped or handwritten number of the type of book (to facilitate the filling of repeat orders for the same kind of book). The labels also show the stamped word "Liefe-rung" [delivery], and, with one exception, the date on which delivery was made. As a sample, there is attached

as Exhibit 2 a photographic copy of the stationer's label on the inside front cover of Strazze-Journal, vol. I.

I have compared the date of delivery of each book with the date of the first entry in that book. The comparison is tabulated in Exhibit 3 with respect to the Chemie books and in Exhibit 4 with respect to the Osmon books. Eight of the eleven Chemie Strazze-Journals are stamped as having been delivered on a later date than the date of the first entry therein. The time difference ranges from two or three months (vols. III, XI), to seven months (vols. VI, IX), and, in the case of volume I, twenty-one months. The same phenomenon—the delivery date later than the date of the first entry in the book—is to be found in the case of other of the books of Chemie and Osmon, and is shown in Exhibits 3 and 4.

3084 4. *Posting Stamps on the Correspondence.*—It appears that most of I. G. Chemie's and Osmon's correspondence reflecting business transactions was marked with a posting stamp, to show that it was posted in the books of account. The mark used consisted of a rubber stamp in which an oval outline enclosed the following abbreviations:

Str. S. _____
KK. S. _____

A photographed sample of this posting stamp is attached as Exhibit 5. The upper line of the stamp, "Str. S.," an abbreviation for "Strazze, Seite" (Journal, page), refers to the page of the Strazze-Journal in which a transaction is posted. The lower line, "KK. S.," an abbreviation for "Konto-Korrent-Buch, Seite" (General Ledger, page), similarly refers to the page of the Konto-Korrent General Ledger.

Most of the documents so stamped show a handwritten page number on the upper, or Strazze, line in the stamp, and in a number of instances also show a page number on the lower, Konto-Korrent, line in the stamp. In a few instances, a page is entered only in the Konto-Korrent line, or no page is entered on either line.

I have made a test check, comparing the page number of the book in which, according to the stamp, the transaction was posted, with the page in the book on which the transaction is entered. The results for the Osmon books, for the period April 1933 to October 1945, are tabulated in Exhibit 6; and the results for the Chemie books, for the period December 1930 to October 1945, are tabulated in Exhibit 7.

With respect to the Osmon books, there is no discrepancy between the Strazze-Journal pages appearing in the posting stamps and the pages of the Strazze-Journal produced on which the transactions actually are entered. (Exhibit 6).

3085 The facts are otherwise with respect to the Chemie books.

Like the actual pages of the Strazze-Journals produced (each of which has 101 numbered pages), the progress of Strazze-Journal page numbers in the successive posting stamps is chronological. That is, as time progresses, the numbers rise from 1 to 101, and then they continue again with the number 1. See Exhibit 7, col. 3. There is, however, an almost constant discrepancy between the Strazze-Journal page in the posting stamps and the page of the Strazze-Journal on which the transaction is actually entered. See Exhibit 7, cols. 3-4. Only in the case of a few of the sampled transactions, all during the period 1939-1940, do the Strazze-Journal pages in the posting stamp coincide with the pages of the produced Strazze-Journal on which the transactions are entered. See the underlined items in columns 3-4 of Exhibit 7.

A similar discrepancy exists with respect to the Konto-Korrent-General Ledger page numbers. Though there are many fewer instances where Konto-Korrent page numbers appear in the posting stamp, these numbers, in every case but one, do not tally with the pages of the produced Konto-Korrent-General Ledger on which the transaction is actually entered. See Exhibit 7, cols. 6-7.

While from the above it appears that the Strazze-Journals and the Konto-Korrent-General Ledgers which were produced are not the books in which the transactions were originally posted, the produced sets of books are consistent and complementary between themselves. That is, the produced Konto-Korrent-General Ledger was made up from the produced Strazze-Journal. Thus, in a column in the Strazze-Journal entitled "Folio," there are listed, as references, pages of the Konto-Korrent-General Ledger on which the transactions are entered. The transaction, as it appears in the

3086 produced Strazze, is in fact recorded on the page of the Konto-Korrent, indicated in the reference in the produced Strazze. E.g., a payment of sfrs. 1,980,561.35, November 13, 1937, Deutsche Laenderbank, transfer to old dollar special account, is entered in the produced Strazze-Journal, vol. VI, on page 86, with a reference to page 167. The payment is in fact entered on page 167 in the produced Konto-Korrent-Buch-General Ledger, vol. III.

5. *Posting Stamps in Chemie's Kassabuch-Petty Cash Book.*—Chemie's Kassabuch-Petty Cash Book provides confirmation that the Strazze-Journals produced are not the Strazze-Journals in which Chemie originally entered its transactions. In the Kassabuch there appear monthly totals of the various petty cash disbursements, e.g., payments to cleaning women, etc. As these totals were entered in the Strazze-Journal, the customary posting stamp was put on the Kassabuch. Thus, the posting stamp, with a page number inserted at "Str. S.," appears in the Kassabuch, vol. 1, underneath the monthly totals disbursed. Exhibit 8 is a comparative table showing, for sampled months between 1936 and 1944 (except 1939), the page numbers of the Strazze-Journal on which these totals were posted, according to the posting stamps and according to the produced Strazze-Journals.

For the months in 1936, 1937 and 1938, the Strazze-Journal pages in the posting stamp do not tally with the pages

in the produced Strazze-Journals on which the disbursements are entered. Rather, the page numbers in the posting stamps are in conformity with the pages in the posting stamps on business correspondence of the same months in those years, as listed in Exhibit 7.

3087 In the year 1939, the Kassabuch-Petty Cash Book shows a change. In January, February, May, August, November, and December of that year, page numbers in the posting stamp were crossed out and other numbers substituted. Exhibit 9 lists these changes. With the changes, the page numbers became identical with the page numbers of the Strazze-Journals produced on which the disbursements are actually posted. No changes were required in the instances where the original pages in the posting stamps happened to coincide with the page numbers of the Journal produced on which the disbursements are entered.

For the period after 1939, the Strazze-Journal pages in the posting stamps (or the page numbers simply written in when the stamp was not used) do, in fact, coincide with the pages in the produced Strazze-Journals on which the disbursements are actually entered.

6. *The Number of Volumes of Chemie's Original Strazze-Journal.*—Chemie produced eleven volumes of Strazze-Journal, covering the period 1928 to 1945 (*supra*, p. 2), each book containing 101 numbered pages. The posting stamps on the correspondence, however, show that Chemie had thirteen original Strazze-Journals in this same period. The page number 1 or 2, referring to Strazze-Journal Seite-Page, recurs in the posting stamps at thirteen points of time, at intervals of at least a year. See Exhibit 10, in which are tabulated thirteen documents bearing such posting stamps. These documents are preceded by documents bearing a very high page number, up to 101. See column 3 of Exhibit 7. That there were thirteen such cycles of Strazze-Journal page numbers is confirmed by the progressive rise and fall of the numbers, indicated in column 3 of Exhibit 7.

3088 The cycles of page numbers, therefore, show that thirteen Strazze-Journal were filled up in the period for which only eleven Strazze-Journals were produced. Exhibit 10 shows the approximate date on which each of these thirteen volumes of Strazze-Journal must have begun.

/s/ GEORGE H. ELKAN.

[Sworn to December 30, 1952]

3089 **Exhibit 1.**

CORRESPONDENCE FOLDERS CONSULTED

I. G. CHEMIE FOLDERS:

Title	Period of Coverage
American I. G. Chemical Corp., New York, w/Agfa Ansco Corp. shares	Dec. 2, 1929-Oct. 13, 1932
American I. G. Chemical Corp., New York	Dec. 21, 1930-Dec. 31, 1931
American I. G. Chemical Corp., New York	Jan. 2, 1932-June 2, 1932
American I. G. Chemical Corp., New York	June 1, 1932-Aug. 31, 1932
American I. G. Chemical Corp., New York	Sept. 6, 1932-Aug. 4, 1939
Bank of Manhattan Co., New York	May 8, 1940-Dec. 1, 1942
Barclays Bank Ltd., London	July 20, 1931-Dec. 27, 1935
Barclays Bank Ltd., London	Mar. 28, 1936-Sept. 30, 1939
Den Norske Creditbank, Oslo	Oct. 31, 1941-Jan. 22, 1943
Deutsche Laenderbank A. G., Berlin	Oct. 21, 1929-Dec. 31, 1931
General Anilin & Film Corp., New York	Feb. 23, 1940-Jan. 9, 1942
Gibbons, Wells & Co., New York	Mar. 16, 1933-Sept. 4, 1936
Greutert, Ed. & Cie., Basel	June 25, 1928-Aug. 29, 1930
Greutert, Ed. & Cie., Basel	Sept. 3, 1930-Oct. 21, 1931
Greutert, Ed. & Cie., Basel	Nov. 4, 1931-July 29, 1932
Greutert, Ed. & Cie., Basel	Aug. 1, 1932-Aug. 31, 1933
Greutert, Ed. & Cie., Basel	Sept. 2, 1933-Dec. 31, 1934
Greutert, Ed. & Cie., Basel	Jan. 1, 1935-Dec. 31, 1935
Greutert, Ed. & Cie., Basel	Jan. 1, 1936-Dec. 31, 1936
Greutert, Ed. & Cie., Basel	Jan. 4, 1937-Dec. 31, 1937
Greutert, Ed. & Cie., Basel	Jan. 3, 1938-Dec. 31, 1938
Greutert, Ed. & Cie., Basel	Jan. 3, 1939-Dec. 31, 1939
Irving Trust Co., New York	Aug. 18, 1933-Nov. 1, 1935
Irving Trust Co., New York	Jan. 1, 1936-May 11, 1939
Norsk Hydro Elektrisk Kvaelstof Aktieselskab, Oslo	Dec. 4, 1929-Dec. 19, 1938
Sturzenegger, H. & Cie., Basel	Jan. 4, 1940-Dec. 31, 1940
Sturzenegger, H. & Cie., Basel	Jan. 2, 1941-Dec. 31, 1941
Sturzenegger, H. & Cie., Basel	Jan. 5, 1942-Dec. 31, 1942
Sturzenegger, H. & Cie., Basel	Jan. 2, 1943-Dec. 31, 1943
Sturzenegger, H. & Cie., Basel	Jan. 3, 1944-Dec. 31, 1944
Sturzenegger, H. & Cie., Basel	Jan. 2, 1945-June 30, 1945
Sturzenegger, H. & Cie., Basel	July 2, 1945-Oct. 30, 1945
Swiss Bank Corporation, New York	June 24, 1940-July 10, 1942
OSMON FOLDERS:	
Files Union Fiduciaire, Lausanne, w/Parta S. A.	Jan. 13, 1934-Dec. 31, 1937
Greutert, Ed. & Cie.	June 25, 1928-Dec. 31, 1947
Greutert, Ed. & Cie./H. Sturzenegger & Cie.	Jan. 20, 1938-Oct. 22, 1945

LEONHARD GESSLER & Cie.

BASEL

73489

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Exhibit 3.

DELIVERY DATES AND STATIONER'S LABELS APPEARING IN CHEMIE'S BOOKS OF ACCOUNT

Delivery Dates Marked With Asterisk Are Later Than the Date the Book Starts

Title of book	Label of	Lieferung [delivery] date	Date on which Book starts
Strazze-Journals Vol.			
I	Leonhard Gessler & Cie., Basel	Apr. 7, 1930*)	June 25, 1928
II	Leonhard Gessler & Cie., Basel	Feb. 23, 1931*)	Aug. 28, 1930
III	Leonhard Gessler & Cie., Basel	Mar. 4, 1932*)	Dec. 24, 1931
IV	Leonhard Gessler & Cie., Basel	July 30, 1932*)	Dec. 31, 1932
V	Leonhard Gessler & Cie., Basel	July 6, 1933	July 4, 1934
VI	Leonhard Gessler & Cie., Basel	Feb. 16, 1937*)	July 1, 1936
VII	Buehler A. G., Basel	Apr. 30, 1938*)	Dec. 31, 1937
VIII	Buehler A. G., Basel	Feb. 19, 1940*)	Oct. 9, 1939
IX	Buehler A. G., Basel	Nov. 25, 1941*)	Apr. 24, 1941
X	Buehler A. G., Basel	Oct. 5, 1942	Nov. 17, 1942
XI	Buehler A. G., Basel	Dec. 15, 1944*)	Sept. 1, 1944
			Nov. 12, 1945
Konto-Korrent-Buch-General Ledger Vol.			
I	Leonhard Gessler & Cie., Basel	Apr. 2, 1930*)	June 25, 1928
II	Leonhard Gessler & Cie., Basel	Dec. 16, 1932*)	Jan. 1, 1932
III	Leonhard Gessler & Cie., Basel	Nov. 21, 1934	Jan. 1, 1935
IV	Buehler A. G., Basel	Apr. 22, 1938*)	Jan. 1, 1938
V	Buehler A. G., Basel	none	Jan. 1, 1943
Effekten-Skontro-Security Ledger Vol.			
I	Leonhard Gessler & Cie., Basel	Apr. 2, 1930*)	Oct. 30, 1928
II	Leonhard Gessler & Cie., Basel	Nov. 29, 1930	Jan. 1, 1938
III	Buehler A. G., Basel	Feb. 8, 1944*)	Jan. 1, 1944
Dividenden-Konto-Dividend Book Vol.			
I	No label		1929
II	Leonhard Gessler & Cie., Basel	none	1935
Kassabuch-Petty Cash Book Vol.			
I	Leonhard Gessler & Cie., Basel	Sept. 15, 1936*)	Sept. 14, 1936
II	Buehler A. G., Basel	Jan. 5, 1945*)	Jan. 1, 1945
Hauptbuch-Monthly Balance Book Vol.			
I	Leonhard Gessler & Cie., Basel	none	1928
II	Buehler A. G., Basel	none	1945

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3092 Exhibit 4.

DELIVERY DATES AND STATIONER'S LABELS APPEARING IN OSMON'S BOOKS OF ACCOUNT

Delivery Dates Marked With Asterisk Are Later Than the Date the Book Starts

Title of Book Strazze-Journals	Label of	Lieferung [delivery] date	Date on which Book starts
Vol. III	Leonhard Gessler & Cie., Basel	July 30, 1932	Jan. 1, 1933
IV	Buehler A. G., Basel	Aug. 24, 1944*)	July 1, 1944
Konto-Korrent-Buch-General-Ledger	Leonhard Gessler & Cie., Basel	July 19, 1932	Jan 1, 1933
Effekten-Skontro-Security Ledger	Leonhard Gessler & Cie., Basel	July 7, 1930*)	1929
Hauptbuch Monthly Balance Book Vol. III	Leonhard Gessler & Cie., Basel	none.	Jan. 1, 1933

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Exhibit 6.

Osmoni, April 1933-October 1945

COMPARISON OF STRAZZE-JOURNAL PAGES IN POSTING STAMPS WITH PAGES OF THE STRAZZE-JOURNAL ON WHICH THE TRANSTIONS ARE ENTERED

Date	Chemie No. of Doc.	Amount involved in transaction, in Sfrs.	Page of the description within posting stamp, at "Str. S."	Osmon Strazze-Journal at which Transaction entered
1933				
April	E- 378	116,400.	1	1
Nov.	E- 390	829.60	5	5.
1934				
June	E- 408	57.80	9	9
Oct.	E- 417	3,250.	11	11
Dec.	E- 419	213.20	12	12
1935				
Mar.	E- 431	500,001.50	15	15
May	E- 433	114,600.	16	16
Sept.	E- 441	7,500.	17	17
1936				
June	E- 459	112,800.	23	23
Dec.	E- 462	1,998,700.	26	26
Dec.	E- 467	2,349,131.40	26	26
1937				
Jan.	E- 471	2,349,131.40	29	29
Sept.	E- 479	752,855.	32	32
Dec.	E- 486	6,624,952.90	34	34
1938				
June	E-1301	117,517.56	37	37
Nov.	E-1308	158,310.	41	41
1939				
July	E-1318	59,039.10	46	46
Oct.	E-1323	135,002.50	47	47
Dec.	E-1325	1,617.	48	48
1940				
Feb.	E-1331	80,557.15	50	50
July	E-1335	75,530.70	51	51
Nov.	E-1340	150,000.	55	55
1941				
Mar.	E-1359	345.40	57	57
June	E-1376	2,895,100.	61	61
Sept.	E-1399	221,235.10	66	66
1942				
June	E-1445	357.90	74	74
1943				
Jan.	E-1471	10,000.	82	82
Sept.	E-1497	2,000.	91	91
Nov.	E-1502	15,000.	93	93
1944				
May	E-1525	47,000.	98	98
July	E-1539	43,833.70	1	1
1945				
July	E-1576	3,600.	14	14
Oct.	E-1578	50,000.	15	15

3095

Exhibit 7.

I. G. Chemie, Dec. 1930-Oct. 1945

COMPARISON OF STRAZZE-JOURNAL PAGES A
KONTO-KORRENT-GENERAL LEDGER PAG
IN POSTING STAMPS, WITH PAGES OF T
STRAZZE-JOURNAL AND KONTO-KORRE
PRODUCED AT WHICH TRANSACTIONS A
ENTERED.

Number of Document	Nature of Transaction	Strazze-Journal: Page, in Stamp, at "Str. S."	Strazze-Journal: Page & Vol. where transaction recorded: Page	Strazze-Journal: Page & Vol. where transaction recorded: Vol.	Konto-Korrent-Gene Page, in Stamp, at "KK.S."	Konto-Korrent-Gene Page where re Page
Dec. 1930						
C- 9493	Credit frs. 500,000	27	15	II		
C- 9003	Credit frs. 500,000	28	16	II		
C- 9495	Credit $1,019,000	29	17	II		
C- 9497	Credit frs. 1,881,118.75	29	17	II		
C- 9501	Credit frs. 1,693,220.90	30	18	II		
C- 9505	Credit frs. 770,890.95)					
	) Credit frs. 270,653.00)	32	20	II		
	) Debit frs. 152,316.15)					
Jan. 1931						
C- 9516	Debit frs. 1,707,929.60	38	27	II		
C- 9519	Debit frs. 38,090.65	36	27	II		
C- 9523	Debit frs. 19,656.00	37	28	II		
C- 9525	Debit frs. 79,968.65	38	28	II		
C- 9528	Debit frs. 6,425.70	37	29	II		
April 1931						
C- 725	Credit $2,000,000	44	35	II		
July 1931						
C- 1804	Credit £ 1,000	72	61	II		
Dec. 1931						
C- 9791	Debit [illegible]3,500	12	97	II	39	(150
						(25
C- 9785	Debit £ 10,000	14	99	II	48	(119
						(106
C- 9802	Debit RM 5,000	16	1	III		
C- 9806	Credit Hfl. 100,000	16	2	III		
C- 9822	Credit frs. 166,822.60	1	8	III		
C- 9827	Credit $12,073.45	39	12	III		
Jan. 1932						
C- 9830	Credit Hfl. 100,000	17	15	III		
C- 9834	Credit $165,000	17	2	III		
C- 9840	Debit. Hfl. 300,000	32	17	III		
C- 9842	Credit RM 289,658.65	33	17	III		
C- 9846	Credit Lira 790,000	33	17	III		
C- 9857	Credit RM 175,858.25	37	21	III		

Number of Document	Nature of Transaction			Strazze-Journal: Page, in Stamp, at "Str. S."	Strazze-Journal: Page & Vol. where transaction recorded: Page	Strazze-Journal: Page & Vol. where transaction recorded: Vol.	Konto-Korrent-General Ledger: Page, in Stamp, at "KK.S."	Konto-Korrent-General Ledger: Page & Vol. where transaction recorded: Page	Konto-Korrent-General Ledger: Page & Vol. where transaction recorded: Vol.
3096									
C-10846	debit	frs.	492,541.80	81	19	V			
C-10858	Credit	frs.	68,740.60	82	20	V			
C-10859	Debit	frs.	80,000	82	20	V			
3097									
Jan. 1935									
C-10866	Credit	frs.	4,328,943.75	3	29	V			
C-10867	Debit	frs.	2,255,320.50	2	29	V			
C-10877	Debit	frs.	17,923.35	1	29	V			
C-10883	Debit	frs.	84.20	1	30	V			
C-10884	Debit	frs.	14,609,716.40	83	25	V			
)	Credit	frs.	5,038,740.65	83	25	V			
C-10886	Debit	frs.	204	2	30	V			
)	Debit	frs.	306	2	30	V			
Dec. 1935									
C-11108	Debit	frs.	2,000	43	70	V	70	5	III
C-11126	Debit	frs.	130,000	45	72	V	70	5	III
)	Credit	frs.	25,000						
C-11128	Debit	frs.	470,654.60	46	72	V			
C-11129	Credit	frs.	357,131.70	53	72	V			
C-11130	Debit	frs.	70,000	53	76	V			
Jan. 1936									
C-11135	Debit	frs.	250	61	82	V	70	5	III
C-11137	Credit	frs.	76,270	61	82	V	70	(5	III
								(177	III
C-11140	Debit	frs.	13.09	61	83	V	70	5	III
June 1936									
C-11214	Debit	frs.	3,000	74	96	V	70	7	III
C-11231	Debit	frs.	26.50	76	98	V	70	7	III
C-11233	Credit	frs.	112,800	77	98	V	70	(7	III
								(101	III
C-11235	Debit	frs.	1,147.50	77	98	V	70	7	III
Oct. 1936									
C-11376	Credit	frs.	1,848	101	21	VI	70	9	III
Nov. 1936									
C-11377	Debit	frs.	51.10	1	22	VI	70	9	III
Dec. 1936									
D- 3743	Credit	Kr.	451,966.32	7	27	VI			
June 1937									
C-11508	Debit	frs.	75.30	40	59	VI	70	11	III
C-11512	Debit	frs.	219,187.50	40	59	VI	70	12	III
C-11520	Debit	frs.	8,608.05	43	61	VI	70	(38	III
								(12	III
3098									
C-11522	Credit	frs.	112,800	44	62	VI	70	(12	III
								(101	III
C-11532	Debit	frs.	16,633.50	47	66	VI	70	12	III
Dec. 1937									
C-11626	Debit	frs.	490.70	73	91	VI	70	13	III
C-11633	Debit	frs.	374,682.15	78	91	VI	70	15	III

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Number of Document	Nature of Transaction	Strazze-Journal: Page, in Stamp, at "Str. S."	Strazze-Journal: Page & Vol. where transaction recorded: Page	Strazze-Journal: Page & Vol. where transaction recorded: Vol.	Konto-Korrent-General Ledger: Page, in Stamp, at "KK.S."	Konto-Korrent-General Ledger: Page & Vol. where transaction recorded: Page	Konto-Korrent-General Ledger: Page & Vol. where transaction recorded: Vol.
C-11642	Debit frs. 6,492,110.70	79	93	VI	70	(174	III
						(15	III
C-11648	Debit frs. 18,889.45	76	94	VI	70	13	III
C-11659	Credit frs. 237,500.	77	95	VI	70	13	III
C-11662)	Credit frs. 291,973.70)	79	96	VI	70	(13	III
)	Credit frs. 13,552.55)					(83	III
						(81	III
Jan. 1938							
C-11671	Debit frs. 8,621.90	4	6	VII	70	1	IV
C-11673	Debit frs. 860	1	6	VII	70	1	IV
C-11678	Debit frs. 2,011.70	3	8	VII	70	(1	IV
						(192	IV
C-11680	Credit frs. 242,387.80	3	8	VII			
Mar. 1938							
C- 2040	Debit £ 5,4/.-	8	13	VII	20	161	IV
June 1938							
C- 1490	Credit $240,000	22	26	VII			
	$240,000						
	$219,868.80						
Oct. 1938							
D- 1743	Credit $350,000	43	48	VII	102	163	IV
Dec. 1938							
C-11828	Credit frs. 1,920	49	53	VII	70	2	IV
C-11842	Debit frs. 105	51	54	VII	70	2	IV
C-11850	Credit frs. 150.95	51	55	VII	70	2	IV
C-11857	Debit frs. 5,167.75	53	56	VII	70	(192	IV
						(2	IV
3099							
C-11858	Debit frs. 345,845.95	55	59	VII	70	2	IV
Jan. 1939							
C-11861	Debit frs. 860	65	66	VII	70	3	IV
C-11866	Debit frs. 4,615.80	66	67	VII	70	(192	IV
						(3	IV
Feb. 1939							
C-11868	Debit frs. 351.87	68	69	VII	70	3	IV
Mar. 1939							
C-11875	Debit frs. 202.25	70	71	VII	70	3	IV
Apr. 1939							
C-11892	Credit frs. 5,076	74	75	VII	70	3	IV
May 1939							
C-11907	Credit frs. 246,703	76	77	VII	70	3	IV
June 1939							
C-11920	Debit frs. 1,524.80	78	82	VII	70	3	IV
July 1939							
C- 6883	Payment frs. 3,000	89	87	VII			
Aug. 1939							
C-11963	Debit frs. 1,572.45	93	92	VII	78	4	IV
Sept. 1939							
C-11974	Debit frs. 1,512	100	1	VIII	70	4	IV
Oct. 1939							
C-11979	Credit frs. 900	99	101	VII	70	4	IV
Nov. 1939							
C-12003	Debit frs. 57	4	6	VIII	70	4	IV

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Number of Document	Nature of Transaction	Strazze-Journal: Page, in Stamp, at "Str. S."	Strazze-Journal: Page & Vol. where transaction recorded: Page	Strazze-Journal: Page & Vol. where transaction recorded: Vol.	Konto-Korrent-General: Page, in Stamp, at "KK.S."	Konto-Korrent-General: Page & where tr... actio... recorde... Page
Dec. 1939						
C-12017	Debit frs. 243.96	8	9	VIII	70	4
C-12034	Credit frs. 668,437.50	10	11	VIII	70	4
C-12038	Debit frs. 274,990	12	12	VIII	70	4
C-12040	Credit frs. 961,750.00)					
	Debit frs. 144.30)					
	frs. 961,605.70)	15	15	VIII		
C-12045	Credit frs. 298,833.85	13	14	VIII	70	(4
						(181
3100						
Jan. 1940						
D- 9476	Debit frs. 860	25	22	VIII	155	5
D- 9477	Credit frs. 54.55	23	22	VIII	70	5
D- 9478	Debit frs. 80.80	24	23	VIII		
D- 9479	Payment frs. 10,000	24	24	VIII		
D- 9484	Debit frs. 743.04	25	24	VIII		
June 1940						
C- 8907	Credit $1,700,000	42	40	VIII		
July 1940						
C- 1737	Debit $34.61	53	54	VIII	18	166
Aug. 1940						
C- 1743	Debit $250	62	64	VIII	18	166
Dec. 1940						
D- 9666	Debit frs. 19,790	73	75	VIII	155	7
D- 9673	Credit frs. 325,000	73	73	VIII	155	7
D- 9781	Debit frs. 6,250	74	76	VIII	155	7
D- 9682	Credit frs. 473,873.35	75	77	VIII	155	7
D- 9684	Debit frs. 293,236.19	77	79	VIII	155	7
Jan. 1941						
D- 9685	Debit frs. 860	87	86	VIII	155	7
D- 9689	Credit frs. 105.15	88	87	VIII	155	8
D- 9691)	Debit frs. 16,000.00)	89	(87	VIII		
)	Debit frs. 4.50)		(88	VIII		
)	)					
)	Debit frs. 16,004.50)				155	(8
						(99
D- 9692	Credit frs. 4,095	89	88	VIII	155	8
Oct. 1941						
C- 1793	Credit $160,000	31	28	IX		
Dec. 1941						
D- 9867	Credit frs. 13,650	39	36	IX	155	10
D- 9877	Credit frs. 5,007	41	37	IX	155	(10
						(193
D- 9881	Debit frs. 6,250	43	39	IX	155	10
3101						
D- 9884	Debit frs. 248,348.35	44	40	IX	10	10
Jan. 1942						
D- 9890	Credit frs. 714.30	55	49	IX	155	10

Number of Document	Nature of Transaction	Strazze-Journal: Page, in Stamp, at "Str. S."	Strazze-Journal: Page & Vol. where transaction recorded: Page	Strazze-Journal: Page & Vol. where transaction recorded: Vol.	Konto-Korrent-General Ledger: Page, in Stamp, at "KK.S."	Konto-Korrent-General Ledger: Page & Vol. where transaction recorded: Page	Konto-Korrent-General Ledger: Page & Vol. where transaction recorded: Vol.
D- 9892	Debit frs. 7,257,30	56	50	IX	155	10	IV
Sept. 1942							
C- 5142	Debit Kr. 3,546.87	100	94	IX	43	136	IV
Oct. 1942							
D-10046	Credit frs. 16,178.70	101	95	IX	155	12	IV
D-10047	Debit frs. 4,417.70	1	96	IX	155	12	IV
Dec. 1942							
D-10080	Credit frs. 1,109.05	10	3	X	155	13	IV
D-10083	Credit frs. 11,307.40	11	4	X	155	13	IV
D-10086)	Debit frs. 4,150.00)						
)	Debit frs. 4,150.00)	12	5	X	155	13	IV
)	———)						
)	Debit frs. 8,300,00)						
D-10087	Credit frs. 233,478.50	15	8	X	155	13	IV
D-10089	Debit frs. 6,250	12	5	X	155	13	IV
Jan. 1943							
D-10092	Credit frs. 11,375	25	15	X	155	1	V
D-10095	Credit frs. 397.55	26	16	X	155	1	V
Dec. 1943							
D-10203	Credit frs. 2,047.50	62	52	X	155	2	V
D-10205	Credit frs. 2,000,000	63	53	X			
D-10215	Debit frs. 6,250	64	55	X	155	2	V
3102							
Jan. 1944							
D-10216	Debit frs. 860	76	64	X	155	3	V
D-10223	Credit frs. 250,000	76	64	X			
D-10224	Credit frs. 101,900.10	77	65	X	155	3	V
D-10234	Debit frs. 2,896.90	78	66	X	155	3	V
D-10240	Debit frs. 3,520.60	79	66	X	155	3	V
D-10247	Credit frs. 1,026	81	68	X	155	3	V
D-10464	Credit frs. 28.50	32	13	XI	155	7	V
D-10467	Credit frs. 2,220	33	14	XI	155	7	V
D-10469	Credit frs. 1,18[illegible].60	34	14	XI	155	7	V
D-10475	Credit frs. 37,142	38	18	XI			
D-10479	Debt frs. 18,934.65	36	16	XI	155	7	V
Jan. 1945							
D-10480	Debit frs. 860	45	25	XI	155	7	V
D-10488	Credit frs. 3,150	46	26	XI	155	7	V
D-10491	Debit frs. 202,327.55	47	27	XI	155	7	V
D-10498	Debit frs. 55,410.90	48	28	XI	155	7	V
D-10499	Debit frs. 101,032.85	49	29	XI	155	7	V
D-10507	Debit frs. 30,000	50	29	XI	155	8	V
Oct. 1945							
D-10831	Debit frs. 6,250	4	84	XI	155	11	V
D-10845	Credit frs. 525	5	85	XI	155	11	V
D-10848	Credit frs. 8,400	5	86	XI	155	11	V
D-10851	Debit frs. 101,558.80	6	86	XI	155	11	V
D-10869	Credit frs. 2,843.75	9	89	XI	155	11	V

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Exhibit 8.

I. G. Chemie Kassabuch—Petty Cash Book, 1936-19
(except 1939)

COMPARISON OF STRAZZE-JOURNAL PAGES
POSTING STAMPS WITH PAGES OF STRA
JOURNAL PRODUCED AT WHICH TOTALS
PETTY CASH DISBURSEMENTS ARE
TERED.

Months Sampled	Page on which totals appear	Totals of Disbursements in sfrs.	Page, in Stamp, as "Str. S."	Page and Volume of Str Journal Where Disburse Entered Page	Vol.
1936					
Sept.	1	2,000.00	97	16/17	VI
		531.20	97	16/17	VI
Dec.	4	11,000.00	9	29	VI
		593.30	9	29	VI
		62.90	9	29	VI
1937					
June	10	220.00	45	63	VI
		2,000.00	45	63	VI
		1,134.80	45	63	VI
Dec.	16	49.10	78	96	VI
		10,000.00	78	96	VI
		2,395.50	78	96	VI
		188.75	78	96	VI
1938					
Jan.	17	5,000.00	3	8	VII
		741.79	3/4	8	VII
		49.40	3/4	9	VII
Dec.	28	6,000.00	52	56	VII
		1,264.40	52	56	VII
		256.00	52	56	VII
1940					
Jan.	42	917.96	24	24	VIII
		158.90	24	24	VIII
		80.35	24	24	VIII
		0.60	24	24	VIII
Dec.	53	8,000.00	76	76	VIII
		4,344.95	76	76	VIII
		272.55	76	76	VIII
1941					
Jan.	54	1,346.12	88	88	VIII
		34.50	88	88	VIII
Dec.	65	933.00	39	39	IX
		2,000.00	39	39	IX
1942					
Jan.	66	894.30	50/51	50	IX
		153.00	50/51	50	IX
Dec.	77	181.55	4	4	X
		600.10	4	4	X
		150.00	4	4	X

Months Sampled	Page on which totals appear	Totals of Disbursements in sfrs.	Page, in Stamp, at "Str. S."	Page and Volume of Strazze-Journal Where Disbursements Entered: Page	Vol.
1943.					
Jan.	78	5,745.30	17	17	X
		362.32	17	17	X
		20.60	17	17	X
Dec.	89	5,000.00	56	56	X
		792.33	56	56	X
		150.00	56	56	X
3104					
1944					
Jan.	90	326.26	fol. 67*)	67	X
		25.85	fol. 67*)	67	X
Dec.	101	1,129.62	fol. 16*)	16	XI
		150.00	fol. 16*)	16	XI.

*) No stamp appears; the word "fol." and the number are handwritten.

3105 **Exhibit 9.**

I. G. Chemie Kassabuch — Petty Cash Book, 1939

COMPARISON OF STRAZZE-JOURNAL PAGES IN POSTING STAMPS, AS WRITTEN AND CHANGED, WITH PAGES OF STRAZZE-JOURNAL PRODUCED AT WHICH PETTY CASH DISBURSEMENTS ARE RECORDED.

Months Sampled	Page on which totals appear	Total of Disbursements in sfrs.	Original Page, in Stamp, at "Str. S."	Changed Page, in Stamp, at "Str. S."	Page and Volume of Strazze-Journal where Disbursements Recorded: Page	Vol.
Jan.	29	551.52	67	68	68	VII
Feb.	30	665.25	69	70	70	VII
March	31	811.90	72	no change	72/73	VII
		190.65		made		
Apr.	32	1,000.00	74	no change	75	VII
		851.21		made		
May	33	7,500.00	76	78	78	VII
		1,644.55				
		1,410.00				
June	34	1,046.60	81	no change	81/82	VII
		180.00		made		
July	35	1,559.91	89	no change	89	VII
		639.29		made		
		3.00				

Months Sampled	Page on which totals appear	Total of Disbursements in Mrs.	Original Page, in Stamp, at "Str. S."	Changed Page, in Stamp, at "Str. S."	Page and Volume of Strazze-Journal where Disbursements Recorded Page	Vol.
Aug.	36	5,000.00 3,426.65 1,721.70 1.50	94	95	95	VII
Sept.	37	1,109.05 180.00	100	no change made	99/100	VII
Oct.	38	7,000.00 3,818.47	38*)	4	4	VIII
Nov.	39	777.95 0.30	7	8	8	VIII
Dec.	49	911.72 180.00 11.00	11	12	12	VIII

*) The figure "38," the actual page of the Petty Cash Book off which the stamp appears, was doubtless an error. Note, in the column in the text, that the pages reflected go to 100 and then begin again with a low number. See also Exhibit 5, October 1939.

3106

Exhibit 10.

BEGINNING DATE OF EACH OF THIRTEEN ORIGINAL I. G. CHEMIE STRAZZE-JOURNALS, 1928-1945, ACCORDING TO POSTING STAMPS.

Documents, Each Within a Different Year Between 1928 and 1945, Bearing a Reference to Page 1 of a Volume of Strazze-Journal.

Chemie No. of Document	Date of Document	Page in posting stamp at "Str. S."	Should be in the beginning of Strazze-Journal
C- 9144	June 25, 1928	1*)	I
C- 6108	July 2, 1930	1*)	II
C- 9532	Oct. 1, 1931	1	III
C-10057	July 1, 1932	1	IV
C-10419	July 3, 1933	1	V
C-10872	Jan. 3, 1935	1	VI
C-11377	Nov. 9, 1936	1	VII
C-11672	Jan. 4, 1938	1	VIII
C-11990	Oct. 17, 1939	2	IX
D- 9749	Apr. 15, 1941	1	X
D-10047	Oct. 17, 1942	1	XI
D-10327	May 10, 1944	1	XII
D-10816	Sept. 25, 1945	1	XIII

*) No posting stamp appears. "Fol. 1" or "1" appears, in handwriting.

3107 Filed January 23, 1953. Harry M. Hull, Clerk.

Partial Order for the Production of Documents

Upon consideration of the motion of defendants of February 13, 1952, for the further production of documents of plaintiff, and after hearing, it is hereby

ORDERED that the documents bearing SCO numbers 3391-3490 and 14632-14727 be produced by the plaintiff within two weeks from this date for inspection, copying, and photographing or microfilming by the defendants.

Action on the other portions of defendants' motion of February 13, 1952 is reserved.

Dated: January 19, 1953.

/s/ WM. J. HUGHES, JR.,
Special Master.

3108 Filed January 29, 1953. Harry M. Hull, Clerk.

Motion by Plaintiff for Additional Discovery and for Description of Withheld Documents.

Comes now the plaintiff, by its undersigned attorneys, and moves the Special Master as follows:

(1) That the defendants be required to exhibit to the plaintiff for inspection, copying and photographing all relevant documents, not privileged, which they have received since the completion of the original inspection by plaintiff.

(2) That the defendants be required to give a written description of the documents (a) which they withheld as privileged from examination by plaintiff at the time of the original inspection, and (b) which they may withhold as privileged from the additional discovery prayed for in the preceding paragraph of this motion.

[Signed by counsel for plaintiff]

3111 Filed February 5, 1953. Harry M. Hull, Clerk.

Motion by Plaintiff to Require Defendants to Co-Operate With Plaintiff in Preparing Applications to Swiss Federal Attorney Under Paragraph 3 of His Letter of June 25, 1951.

1. Comes now the plaintiff, by its undersigned attorneys, and moves the Court (Chief Judge Laws) to require the defendants to co-operate with the plaintiff in the preparation of applications for submission by the plaintiff to the Swiss Federal Attorney for the release of individual documents pursuant to paragraph 3 of the letter of the Swiss Federal Attorney, dated June 25, 1951.

2. In the afore-mentioned letter, the Swiss Federal Attorney stated as follows:

> "3. On the other hand we are prepared to release individual documents proved to be indispensable for the suit, insofar as explicit statements are produced for each one of these documents by all the parties having an interest in them (banking firm H. Sturzenegger & Co., its clients and other individuals or juridical persons participating), from which it should be clearly evident that there is neither a violation of Art. 273 St GB (economic espionage), nor of Art. 47 of the Bank Law (bank secrecy). The Office of the Swiss Federal Attorney explicitly reserves itself the right to refuse to release individual documents without stating its grounds for this."

3. Recently, in order to be able to comply with the attached order of the Special Master, dated January 19, 1953, for the production of approximately 200 documents which were regarded by the plaintiff as coming within the seizure order of the Swiss Federal Attorney of June 15, 1950, plaintiff availed itself

3112 of the foregoing provision, and after submitting the problem to the office of the Swiss Federal Attorney, accompanied by evidence of appropriate waivers and consents where such were required, was able to exhibit such documents to the defendants.

4. Defendants have scorned the foregoing offer of the Swiss Federal Attorney, and showed no interest recently in the proposal of the plaintiff to pursue this phase of the matter. Since defendants have asserted that they would not be satisfied with less than all of the Sturzenegger papers, plaintiff has not been willing to undertake unilaterally the choice of papers for whose release it would petition the Swiss authorities, only to be charged by the defendants with making self-serving selections and with default regarding every paper not produced.

5. The incident referred to in paragraph 3 above indicates that further efforts might prove equally successful, and plaintiff repeats its willingness to make applications, provided the defendants will co-operate with it in preparing categories of papers to be the subject of such applications by the plaintiff.

[Signed by counsel for plaintiff]

* * *

3117 Filed February 5, 1953. Harry M. Hull, Clerk.

Plaintiff's Memorandum in Opposition to Defendants' Motion About Plaintiff's Books.

It is settled law, as the rule expressly stipulates, that a moving party under Rule 34, Federal Rules of Civil Procedure, must show good cause for a production order thereunder.

The rule further provides for the production of documents, etc., which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b). The latter rule, in effect, defines its scope as any relevant matter which appears reasonably calculated to lead to the discovery of admissible evidence.

The motion of defendants regarding plaintiff's books admits that defendants have inspected and copied 25 Chemie books and 5 Osmon books "on the premises of I. G. Chemie," and that their "sampling" process did not

uncover a single transaction that could not be traced into those books.

Moreover, defendants have made no showing,—and, indeed, can make none—that those 30 books were not examined by the Swiss Compensation Office.

Defendants go about their motion as if they were auditors engaged by a business management, instead of merely being parties to a civil action with circumscribed rights under a rule of procedure. They complain about two things. First, some of the books appear to have been purchased after the

3118 dates of the earliest entries therein; and, second, certain oval posting stamps contain page references that they cannot trace.

Defendants have the vouchers and other documents—whose genuineness they do not assail—and they have found the transactions, which are reflected in those vouchers, actually and accurately posted in the books which plaintiff has produced.

There is no showing that the books produced fail in any respect to reflect faithfully and accurately any transactions which defendants claim to be relevant or material to this case. Defendants do not and cannot claim that the production of other books is in any way essential or necessary to the preparation of their defense of this civil action. Good cause has not been shown; indeed, no cause at all has been shown. Relevancy has not been established. There is no showing of the likelihood of any "leads" to admissible evidence. Surely, a party must establish relevancy before he gets an order under Rule 34, not afterwards.

Under the circumstances, no effort has been made by the defendants to meet the requirements of the rule, and their motion, therefore, should be denied.

Respectfully submitted,

[Signed by counsel for plaintiff]

* * *

3119 Filed February 6, 1953. Harry M. Hull, Clerk.

Defendants' Supplemental Memorandum Responding to "Plaintiff's Supplemental Memorandum to Judge Laws Prompted by Further Study of Transcript of Oral Arguments."

Oral argument in this matter was concluded on November 25, 1952. On February 2, 1953 plaintiff filed a "Supplemental Memorandum to Judge Laws Prompted by Further Study of the Transcript of Oral Arguments."

Plaintiff repeats and repeats the assertion that its refusal to produce the Sturzenegger papers was "involuntary." This we deny. Plaintiff is in plain default. It has control over the papers, and offers as its only excuse for nonproduction—as its sole reason why nonproduction is involuntary—the fact that the Swiss government has seized the papers to execute certain Swiss laws. This excuse—this sole reason why plaintiff's default is involuntary—is insufficient.

In the circumstances, the plaintiff, a Swiss national, cannot avail itself of the actions of its government. The secrecy laws under which the Swiss government has acted are not recognized in our courts. These Swiss secrecy laws cannot be allowed to subvert

3120 our concept of due process, which requires that the facts be brought to light so that justice be done. These secrecy laws cannot be allowed to deprive the defendant of the right to defend by searching out the facts of the case. And these laws cannot be allowed to permit a transparent evasion of the Trading with the Enemy Act, by making it possible for a plaintiff to avoid exposure of its enemy status by a successful resort to the secrecy laws of a foreign country.

Plaintiff summarizes its argument in the concluding paragraph of its memorandum, on page 8, as follows:

> In the case at bar, where plaintiff was unable to produce the records of the Bank Sturzenegger & Cie.

because it did not have possession, custody or control over them, an order dismissing the complaint would be violative of Rule 37(b) F. R. C. P. and of the Federal Constitution.

Plaintiff is thus disputing, not the power of the Court to dismiss the complaint where plaintiff is found to have possession, custody, or control over the Sturzenegger papers, but the power of the Court to dismiss if plaintiff does *not* have possession, custody or control. There is no issue on this point. Defendants agree that a finding of plaintiff's control over the Sturzenegger papers is indispensable to an order dismissing the complaint. But we say that the requisite control was once found by the Court, in its order of July 5, 1949 and the accompanying opinion of June 23, 1949, and that since that time the proof of control has been greatly strengthened by further facts developed in the case. This being the case, there can be no question of the Court's power to dismiss the complaint.

The Court may dismiss the complaint on the authority of the Federal Rules or in the exercise of the Court's inherent powers. Rule 37 gives power to dismiss the complaint on a refusal to make discovery. We have shown the refusal to be without valid excuse. The Rule is, moreover, only a single illustration of the inherent and broad powers of the Court, expressed in the Judiciary Act of 1789 and throughout the law, to permit access to the courts only if

3121 the parties can and will comply with the procedures of the courts for the disposition of cases. Plaintiff must here be held responsible for acts which deprive the defendants of an essential means to defend the case. If plaintiff were nevertheless allowed to continue in court, the customary procedures of United States courts would be defeated. It follows that the Court must enter a nonsuit, in protection both of defendants' right to defend and of the procedures established for the administration of justice.

Plaintiff lastly grasps at the thought that a dismissal might take place on trial but should not be ordered in advance of trial. It is however now, before trial, that plaintiff has denied the defendants the right to defend by making discovery of the facts. It is now, before trial, that plaintiff has defeated the customary procedures of United States courts. It is therefore now, before trial, that the complaint should be dismissed.

Respectfully submitted,

[Signed by counsel for defendants]

February 6, 1953.

* * * *

3124 Filed February 19, 1953. Harry M. Hull, Clerk.

Opinion on Government's Right to Inspect Third Parties' Documents in Possession of Plaintiff.

At a hearing January 8, 1953, the Master took under advisement whether Chemie must produce documents on Chemie's premises belonging to third parties. Chemie states that it was neither the sender nor receiver but is in fact the mere bailee of these papers. (Tr. Jan. 8/53, p. 21). It admits these papers were inspected by the S. C. O. and bear S. C. O. numbers. (Tr. p. 17-18, 32). Chemie is reluctant to produce them for fear of violating the Swiss secrecy laws (Tr. pp. 21, 34, 42) and argues they do not come within the scope of Chief Judge Laws' inspection order of June 23, 1949 in that they are not documents of Chemie and hence inspection under Rule 34 FRCP is not authorized. (Tr. 15-20, 35).

3125 The inspection order of July 5, 1949 provides:

> "That plaintiff shall produce and permit the inspection, copying and photographing of the following documents of I. G. Chemie and H. Sturzenegger & Company: The some 700 jackets and 140 account books on the premises of I. G. Chemie and H. Sturzenegger & Cie., examined in the course of the investigation of

the German character of ~~I. G.~~ Chemie by investigators of the Swiss Compensation Office in 1945 and 1946."

If the third-party documents come within the scope of the above quoted order the Master is foreclosed from considering questions of relevancy; the inspection order has already determined such questions. The sole question, therefore, is whether these documents, belonging ~~to~~ third parties, found on Chemie's premises and inspected by the S. C. O. come within the inspection order. I hold that they do. The order above quoted defines the Chemie documents to be inspected as those found in "the some 790 jackets and 140 account books on the premises of I. G. Chemie" examined by the S. C. O. It is conceded that the third-party documents were thus found, examined and stamped by the S. C. O. The Master is thus foreclosed from considering their elimination on the ground their technical ownership was elsewhere. Also, Rule 34 FRCP makes the test not ownership but "possession, custody, or control" and legal ownership is not determinative (4 *Moores* Fed. Prac. p. 2472; *Rockett* v. *Casale, Inc.*, 10 FR Serv. 34.411 Case 6, 7 FRD 575; cf. Master's Op. Aug. 25, 1952, last paragraph). It was stated at the hearing that "some of these papers have to do with correspondence of other people who are somehow related to some of these individuals, business-wise or otherwise." (Tr. Jan. 8,

3126 1953, p. 22). If so, they are not greatly different from the Germann papers found on Chemie's premises which plaintiff has conceded were covered by the inspection order above quoted. (Tr. Jan. 8, 1953, p. 14).

/s/ Wm. J. Hughes, Jr.,
Special Master.

February 16, 1953.

3127 Filed February 20, 1953. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., *etc.*,

Plaintiff,

vs.

JAMES P. McGRANERY, *et al.*,

Defendants,

ERIC G. KAUFMAN, *et al.*,

Intervenor Plaintiffs,

ERNEST ATTENHOFER, *et al.*,

Intervenor Plaintiffs.

Opinion.

Plaintiff, formerly known as "I. G. Chemie" and now known as "Interhandel", is a holding corporation organized in 1928 under the laws of Switzerland, with its principal office at Basle, Switzerland. Between 1942 and 1946, all of its American assets were seized by the United States as enemy owned property. Title to the assets was vested in the Alien Property Custodian and his successor, the Attorney General of the United States, acting under Section 5(b) of the Trading With the Enemy Act, 40 Stat. 411, 50 U. S. C. App. § 1, et seq. (1946), as amended by the First War Powers Act of 1941, 55 Stat. 839, 50 U. S. C. App. § 5(b) (1946), and Executive Orders and regulations issued thereunder.

These assets, valued in excess of $100,000,000, consisted of bank accounts in six New York banks and over 90% of the capital stock of the General Aniline & Film Corporation, an operating company organized under the laws of the State of Delaware and engaged principally in the manufacture of dyestuffs, chemicals, synthetic detergents, and

photographic material. Accruing dividends are held by the Treasurer of the United States.

3128 Plaintiff filed its action on October 21, 1948, in this Court for recovery of the property under Section 9(a) of the Trading With the Enemy Act, *supra*, alleging that it is not and was not an enemy or ally of an enemy under the terms of the Act and naming as defendants the Attorney General and Treasurer of the United States.

Defendants, hereinafter sometimes referred to as the Government, answered that I. G. Chemie, its Officers, agents, and stockholders, engaged and participated in a conspiracy or common plan with I. G. Farben, a German enemy corporation; Ed. Greutert & Cie. (and its successor firm, H. Sturzenegger & Cie.), a Swiss banking partnership, and others unknown with the ultimate purpose and objective "... to conceal, camouflage, and cloak the ownership, control, and domination by I. G. Farben of properties and interests in many countries of the world, including the United States, other than Germany."

On January 10, 1949, plaintiff filed a motion under Rule 34 of the Federal Rules of Civil Procedure for discovery and production of some 23,000 documents in the possession of the Government for inspection, copying and photographing. The Government then filed a motion for an order, pursuant to Rule 34, directing plaintiff to produce for inspection, copying, and photographing, all documents, not privileged, in its possession, custody, or control relating to any matters within the scope of examination permitted by Rule 26(b), including "documents of subsidiaries of the plaintiff, Osmon A. G., and Sturzenegger & Cie."

In opposition to defendants' motion for discovery, plaintiff urged defendants had failed: (1) to designate the documents with sufficient particularity; (2) to show facts from which the Court might conclude the documents were relevant and material to the issues in the case; (3) to show that the documents of

3129 its alleged subsidiary, the banking firm of H. Sturzenegger & Cie., were within the possession, custody and control of plaintiff. By opinion dated June 23, 1949, this Court decided full discovery of the documents should be made by plaintiff, saying:

> "As to plaintiff's claim that it is not shown to have possession, custody or control of the papers and documents sought to be inspected and copied, the Court finds a *prima facie* case of control by plaintiff is made out. If it develops that plaintiff, after *bona fide* efforts to obtain access to records of its subsidiaries, affiliates and others in which plaintiff has an interest, is unable to produce them as ordered, the question of whether further action should be taken by the Court may be considered."

Societe Internationale Pour Participations Industrielles et Commerciales, S. A. v. Clark, 9 F. R. D. 263, 265 (D. C. D. C. 1949).

In conformity with the opinion, the Court issued its order of July 5, 1949, providing, in sequence: (1) inspection, copying, and photographing of Government documents by I. G. Chemie at Washington, D. C.; (2) completion of the deposition of the witness Sturzenegger; (3) plaintiff should produce and permit inspection, copying and photographing by defendants of designated documents, including those of I. G. Chemie, H. Sturzenegger & Cie., and Osmon A. G., at Basle, Switzerland. The designation of documents, some 700 jackets, 140 account books, and lists of some 2500 original documents, was based upon their description by the Swiss Compensation Office, an arm of the executive branch of the Government of Switzerland, in a series of reports issued pursuant to an investigation into the alleged German character of plaintiff.

Copying and inspection of Government documents were completed pursuant to the Court's order in September 1949. The deposition of the witness Sturzenegger was completed on May 29, 1950. Discovery of plaintiff's documents was to begin thirty days from that date.

~~3130~~

3130 In the interim, the Court had denied a motion of the Government that the Sturzenegger documents be produced in Washington rather than Basle, Switzerland, filed on the ground that the witness Sturzenegger had indicated the papers would not be produced because it would be a crime under Swiss laws. The Court likewise denied plaintiff's motion to be relieved from their production, filed on the following grounds: (1) under Swiss law plaintiff never had the power by contract, law or judicial process to compel H. Sturzenegger & Cie. to deliver its records to plaintiff; (2) Sturzenegger had indicated he felt obligated to decline to permit plaintiff to exhibit the records to defendants; (3) disclosure would violate Swiss penal laws; (4) plaintiff no longer had an interest in H. Sturzenegger & Cie.

Two weeks before plaintiff was to make discovery, by order dated June 15, 1950, the Swiss Federal Attorney, taking cognizance of the Court's order of production, and considering that submission of the Sturzenegger documents would constitute a violation of Article 273 of the Swiss Penal Code (economic espionage) and Article 47 of the Bank Law (banking secrecy), seized the files and books of H. Sturzenegger & Cie. through the exercise of the preventive police power. The seizure was not a physical taking but one of constructive possession by interdiction. H. Sturzenegger & Cie. was prohibited from transmitting its records to third persons and from permitting third persons to examine them.

Plaintiff then filed a motion, on June 22, 1950, to be relieved from that portion of the order of July 5, 1949, requiring it to produce the records of H. Sturzenegger & Cie. for inspection. The Government renewed its motion to have the Sturzenegger documents produced in the United States.

3131 Both motions were denied without prejudice, the Court being of the opinion that sufficient evidence had not been presented for appropriate rulings to be

made, and that the pending inspection of plaintiff's documents should proceed pursuant to the order of July 5, 1949. It was stated at that time that the order for production was to stand unimpaired.

During July and August of 1950 large quantities, although apparently not all, of the documents of I. G. Chemie were examined by defendants in Switzerland, but the papers of H. Sturzenegger & Cie. were not produced. On October 31, 1950, defendants moved for dismissal of the complaint. Plaintiff then filed a motion for reconsideration by the Court of its motion of June 22, 1950, seeking relief from the Court's order requiring production of the records of H. Sturzenegger & Cie. At the hearing of these motions the Government contended plaintiff had not exercised good faith in attempting to comply with the Court's order. Finding it necessary to obtain development of the facts as to this alleged lack of good faith and, in that connection, the state of the law of Switzerland applicable to the seizure order of the Swiss Federal Attorney, this Court submitted the questions to a Special Master previously appointed in this case. The Court ordered the Special Master to take evidence and report his findings of fact and conclusions to the Court for further consideration.

The Special Master submitted his report to the Court on December 4, 1951, finding, in substance: (1) plaintiff had sustained the burden of proof in demonstrating its good faith in efforts to obtain production of the Sturzenegger documents; (2) there was no evidence of collusion between plaintiff and the Swiss Government in the seizure of the documents; (3) plaintiff's officers did the best they could to obtain the Swiss Government's permission to produce the papers; (4) there

3132 was a substantial legal basis for the seizure under Swiss law; (5) obtaining waivers would not appear, at any time, to offer a solution to the problem of production of the papers. These findings were reaffirmed following a hearing on newly discovered evidence, and final

findings of fact and conclusions of law submitted by the Special Master on July 9, 1952. On October 15, 1952, plaintiff moved for adoption of the Special Master's report. The Government filed exceptions to the Master's report.

A motion to limit sanctions under Rule 37 of the Federal Rules of Civil Procedure, if imposed by the Court, has been filed by plaintiff-intervenors Kaufman, individually and on behalf of other stockholders similarly situated, in accordance with the opinion of the Supreme Court of the United States, Kaufman v. Societe Internationale Pour Participations Industrielles et Commerciales, S. A., 343 U. S. 156 (1952).

The following matters are before the Court for consideration and decision:

1. Motion by plaintiff for adoption of the Special Master's report, and exceptions by defendants to the Special Master's report.

2. Motion by plaintiff for reconsideration of its motion of June 22, 1950, to be relieved from that portion of the order of July 5, 1949, requiring it to produce the records of H. Sturzenegger & Cie. for inspection by defendants, and that, upon such reconsideration, plaintiff's motion of June 22, 1950, be granted.

3. Motion by defendants for dismissal of complaint under Rule 37(b) for the failure of plaintiff to produce the papers of H. Sturzenegger & Cie.

4. Motion by plaintiff-intervenors to limit sanctions under Rule 37, if imposed by the Court.

3133 The Court finds it is able to dispose of the questions relating to the Special Master's report with little comment. The report is well-considered and there is substantial evidence to support the findings. While it may be true plaintiff did not exercise the utmost diligence and persistence in seeking to rescind the seizure order of the Swiss Federal Attorney in respect of the Sturzenegger

papers, the Court finds plaintiff's efforts were those of a reasonable and prudent person in face of the obstacles confronting it. The Court will overrule the Government's exceptions and adopt the Master's findings that the order of the Swiss Federal Attorney, dated June 15, 1950, confiscating the records, books, and files of the firm of H. Sturzenegger & Cie. is legally supportable under Swiss law, and that plaintiff demonstrated good faith in its efforts to secure production of the papers of H. Sturzenegger & Cie., as ordered by this Court on July 5, 1949.

The disposition of the Master's report does not resolve the issues raised by plaintiff's motion to be relieved from producing the Sturzenegger papers and defendants' motion to dismiss this suit for failure of plaintiff to produce them. The Government argues that notwithstanding plaintiff's good faith, this suit must be dismissed because plaintiff has not complied with essential procedures established for the trial of cases in Courts of the United States. Before the Court decides this major legal point, it must determine certain preliminary questions. The Court must reach a final conclusion as to whether plaintiff had control over the Sturzenegger papers but for their confiscation by the

3134 Swiss authorities. The importance of the production of the papers also must be determined. The Court hitherto has found *prima facie* control by plaintiff over the papers of Sturzenegger & Cie., but since then other facts bearing upon the question have been introduced into the record.

Hans Sturzenegger is a director and an officer or managing agent of I. G. Chemie. The Special Master found that Sturzenegger is the dominant personality certainly in his own company and perhaps in both companies. He is the only unlimited partner of H. Sturzenegger & Cie.

H. Sturzenegger & Cie. is the successor banking firm of Ed. Greutert & Cie. Greutert died on September 9, 1939. Thereafter articles of agreement were drawn, dated

March 28, 1941, providing for the partnership of Sturzenegger, I. G. Chemie and Industriebank, A. G., of Zurich. Business management devolved upon Sturzenegger, as the sole partner with unlimited responsibility, and he could sign singly for the partnership. I. G. Chemie was a silent, or sleeping, partner, and until 1943 held a 44% interest in its own name. Industriebank, A. G., the other limited partner, was established in 1929 with German capital. In 1931 Greutert took over the shares of Industriebank and in 1936 sold them to the present Swiss stockholders. It controls 60% of the preferred share capital of I. G. Chemie, and possesses some of Chemie's original shares. By means of options, pledges, and loans it forms a link, with three other similar companies, Perpetua, A. G., Rigidor, A. G., and Sopadep, A. G., in a tight chain of control by what has been variously called the Chemie-Greutert Complex, the Basle Circle, or the Sturzenegger Circle.

3135 In 1945, the Swiss Compensation Office, an arm of the executive branch of the Government of Switzerland somewhat analogous to the Office of Alien Property of the Department of Justice, undertook two investigations into the degree of German participation in I. G. Chemie. Of the circle of control, the Swiss Compensation Office said, in its report on appeal:

> A conspicuous fact may be the interdependence of firms Perpetua, Rigidor, Sopadep and Industriebank, A. G., but even in this case there is nothing extraordinary about it. The group gathered around Greutert had to strengthen their position so that third parties not belonging to the Complex or representing special interests could not gain influence by purchase or inheritance.

Significantly, the primary investigation of the Swiss Compensation Office was directed not only into the relationships of I. G. Chemie, but also into the business transactions of H. Sturzenegger & Cie., which was said to be very close to I. G. Chemie. No objection was then raised

for discovery were under consideration by the Court. A party cannot self-servingly sell its way out of responsibility to make discovery.

Plaintiff lays stress upon the holding in Munroe v. United States, 216 Fed. 107 (C. C. A. 1st, 1914), as squarely fitting the instant situation. But the decision of that case was clearly on different grounds. The question before the Court

3137 was whether to adjudge a witness in contempt for failure to produce exhibits before a grand jury in Massachusetts called for by a subpoena duces tecum. The party subpoenaed was in New York City. The exhibits were in France, held by his partners, who had the privilege of objecting to their shipment to a foreign place. The Court held there was no duty on the part of the witness in responding to the subpoena to sue and labor to produce shipment of the exhibits to the United States and absolved the witness from contempt charges. Control by a witness over documents sought by subpoena duces tecum is different from control by a party litigant over papers required to be produced for inspection. In case of the witness, the question is contempt for a willful act for not producing what he has on hand, whereas in the case of a party litigant, the question is noncompliance with procedures in the court where plaintiff has brought suit.

The other cases cited by plaintiff, In re Harris, 27 F. Supp. 480 (D. C. N. Y. 1939), and Galanos v. United States, 27 F. Supp. 298 (D. C. Mass. 1939), are not in point. In the Harris case, it was held that under the terms of the National Banking Act a bank in the United States does not have control of the records of branches located in foreign countries. The Galanos case decides only that an employee does not have control of the records of his company.

Certain it is that the Court can pierce the corporate veil to determine the true character of the interests making up its composition. See Kaufman v. Societe Internationale

Pour Participations Industrielles et Commerciales, S. A., 343 U. S. 156 (1952). Subtle relationships are necessarily to be contemplated. CF. Morgan, Stanley & Co. v. Securities and Exchange Commission, 126 F. 2d 325 (C. C. A. 2d, 1942). Through the interlocked web of corporate organization, management and

3138 finance there runs the thread of a fundamental identity of individuals in the pattern of control.

On further consideration, the Court now definitely concludes that the Sturzenegger papers were and are in the possession, custody or control of plaintiff and that except for their confiscation by the Swiss Federal Attorney, plaintiff would be able to produce them.

The next question to be decided is the nature and significance of the Sturzenegger papers as bearing upon the development and resolution of issues in this case.

The records of H. Sturzenegger & Cie. are conceded by plaintiff to be relevant to the issues. Counsel for plaintiff avers he is even more interested and concerned than are defendants in their production, that they are important to him in the presentation of his proof and to meet and refute the allegations of German interest and control made by the Government.

As a recital of what would be revealed by the Sturzenegger papers, the Government represents that only the Sturzenegger papers will reveal: (a) the facts concerning the Circle controlling Chemie, representing 39% of the ownership; (b) the facts concerning the stockholders of Chemie, since all of plaintiff's stock was bearer until 1945; (c) the facts concerning the ownership and activities of the Sturzenegger firm, plaintiff's dominant stockholder, a private bank once German owned; (d) the necessary information concerning the ownership of all of plaintiff's assets, virtually all of which came from Sturzenegger; (e) information concerning the nature of companies controlled by plaintiff and, in particular, concerning the investment and management of plaintiff's assets. The Government contends that by a device known as a consortium or

3139 secretariat, a kind of joint venture or enterprise between Chemie and Sturzenegger in the form of an account on Sturzenegger's books, Sturzenegger has throughout the years invested, loaned or otherwise managed and controlled plaintiff's assets, with the result that no details whatever appear in plaintiff's books, balance sheets, or records.

The Court recognizes that banking records of the transactions of a corporation are among the best possible indicia of its ownership and control. In this case some 55,000 documents are involved. Their pressing importance is apparent not only by reason of their quantity but also by reason of their quality. Their importance is evident from the fact that the Government of Switzerland made full examination of them in their investigation into the alleged German ownership of plaintiff corporation. The question before this Court is precisely the same. This Court's order of July 5, 1949, describes the documents of H. Sturzenegger & Cie. to be produced as those examined by Swiss officials.

Plaintiff maintains defendants are already in possession of most of the counterparts of the Sturzenegger papers, either in original or copy, through their inspection of the documents of I. G. Chemie and its subsidiary, Osmon A. G., and through seizure of the I. G. Farben papers in Germany and German-occupied countries. It is argued that the Government has the depositions of most of the principal actors in the case, and access to the remaining ones. Under the rules of United States Courts a party is not required to accept the assurance of opposing counsel as to what has been made available. He is entitled to draw his own conclusions on examination of the papers. Moreover, if it be true the Government is in possession of the papers, little purpose would be served by the seizure order of the Swiss authorities, since the fact sought to be kept secret would no doubt be made public at trial in any event.

3140 The depositions of witnesses, many of them hostile, could not secure the necessary evidence, since they

can be questioned only on transactions already familiar in some measure to the Government.

The subject matter of the litigation in this Court is broad and sweeping in scope. It is concerned with activities of many persons in many countries over a number of years. The allegation of defendants is that of cloaking and concealment. If true, the nature of the activities must be ferreted out of dark and obscure corners. The lack of availability of the Sturzenegger papers for inspection for use as possible evidence in this case well might prove to be a deciding factor in the outcome of this suit.

Procedural laws, provided as a means of attaining just decisions, are fully as important to be observed as substantive laws, provided, of course, the procedural laws involve substantial points. The Federal Rules of Civil Procedure, prescribed by the Supreme Court of the United States pursuant to authority vested in the Court by the Congress of the United States, 48 Stat. 1064 (1934) as amended, 28 U. S. C. § 2072 (Supp. V, 1952), provide radical departures from procedures formerly governing trials of cases. They make provision for full discovery to adversary parties before trial of evidence available to a party litigant. In Hickman v. Taylor, 329 U. S. 495 (1947), the Supreme Court of the United States stated, at 500-501, 507:

> "* * * civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.
>
> "* * *
>
> "We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end,

either party may compel the other to disgorge whatever facts he has in his possession."

3141 Inspection of the Stutzenegger papers is essential if the parties are to obtain knowledge of the facts and issues before trial. The Government of the United States as a party litigant is entitled to the benefits of the procedures established in the Courts.

The Court has made inquiry whether, under laws of the United States there is a privilege against producing bank records such as is claimed in Switzerland. If the United States grants immunity of bank records from inspection or copying, the Courts would hesitate to insist on production of bank records in Switzerland. The Court has found no law of the United States which would make banking records privileged. The decisions are to the contrary. A banker or a broker may not refuse to produce relevant documents on the ground that communications between him and his customers are confidential and privileged. Interstate Commerce Commission v. Harriman, 157 Fed. 432 (C. C. N. Y., 1908); affirmed in part, reversed in part, on other grounds, 211 U. S. 407 (1908); Bowles v. Shawano Nat. Bank, 151 F. 2d 749 (C. C. A. 7th, 1945), cert. den. 327 U. S. 781 (1946); McMann v. Securities and Exchange Commission, 87 F. 2d 377 (C. C. A. 2d, 1937), cert. den. 301 U. S. 684 (1937); Limburg, The Bankers' and the Brokers' Privilege, 25 Col. L. Rev. 152 (1925); 8 Wigmore on Evidence, § 2286 (3d ed., 1940); Note, 109 A. L. R. 1450.

The Court accordingly comes to consider the basic question of what action should be taken in a case in which a foreign government prohibits its national, a party plaintiff, from performing its duty to make discovery as ordered pursuant to Rules of the Court.

The issue is not one of sovereignty or of comity, but one of jurisdiction. The Court does not sit in judgment on the wisdom of the laws of a foreign sovereign. It fully recognizes and accepts the lawful and rightful exercise of pre-

3142 rogatives by a sovereign nation upon its own soil. Their dignity and integrity are not assailed. The question is when, upon the exercise of this sovereign power, it becomes impossible for a subject to comply with established procedures in this Court for securing evidence, shall this Court permit trial of the case? Or shall it rescind its order to produce? The question appears to be a novel one, not hitherto decided by a Court of the United States.

The Congress of the United States, in enacting the Trading With the Enemy Act, opened the doors of courts of the United States to permit those claiming to be neutrals, as well as citizens of the United States, to assert ownership of properties seized by the United States as belonging to enemy aliens. This Act, being one by which the sovereign consents to be sued, is one of grace, subject to revision or complete repeal at any time. Cf. Lynch v. United States, 292 U. S. 571 (1934). A privilege has been conferred, and conformity to the customary procedures established for the Courts of the United States is required. Cummings v. Deutsche Bank und Discontogesellschaft, 300 U. S. 115 (1937); Banco Mexicano de Commercio e Industria v. Deutsche Bank, 263 U. S. 591 (1924); Pflueger v. United States, 73 App. D. C. 364, 121 F. 2d 732 (1941), cert. den. 314 U. S. 617 (1941). "No man can sue in the courts of any country, whatever his rights may be, unless in conformity with the rules prescribed by the laws of that country." Marshall, C. J., in Dixon v. Ramsay, 3 Cranch (U. S.) 319, 324, 2 L. Ed. 453, 455 (1806). A claimant must take the law as he finds it; he cannot place himself in a better position than other litigants by invoking the laws and procedures of a foreign sovereign. De La Vega v. Vianna, 1 B. & D. 284, 109 Eng. Rep. 792 (K. B., 1830); Don v. Lippmann, 5 Cl. & Fin. 1, 7 Eng Rep. 303 (H. L., 1837).

3143 Procedures of the law of the forum customarily govern law suits. Neutrals as well as citizens of the United States must meet the requirements of these procedures. It seems obvious that foreign law cannot be permitted to obstruct the investigation and discovery of facts

in a case, established as conducive to the proper and orderly administration of justice in a Court of the United States. Even if a foreign government were itself a party, it must conform to the law of the forum and make discovery upon order of the Court. Rothschild v. Queen of Portugal, 3 Y. & C. 594, 160 Eng. Rep. 838 (Exch., 1839); Republic of Haiti v. Plesch, 88 N. Y. S. 2d 9 (1949).

The danger of incrimination in another jurisdiction or claim of foreign law or foreign privilege is not a valid excuse for a refusal to give testimony. United States v. Murdock, 284 U. S. 141 (1931); Societe Internationale Pour Participations Industrielles et Commerciales, S. A. v. McGrath, 9 F. R. D. 680 (D. C. D. C. 1950). The principle is the same, whether the information is locked in the breast of a party by a foreign government's order or whether it is locked in its chests or vaults by the same government order.

To adopt any other course would lead only to frustration and nullification of established procedures. It would permit a foreign government to release only the documents favorable to one party and to retain or destroy the rest. It would permit a foreign government to stipulate the conditions under which documents required in a court of the United States might be released and thus impose foreign procedures in trials of suits in United States Courts. It would permit a foreign party to be placed in a favored position by the laws or action of his government. It might defeat the purposes of the Trading With the Enemy Act by permitting a foreign national to bring suit in this country to recover property seized under the Act and
3144 then seek shelter under the protective cloak of its government when discovery is sought.

This reasoning is fortified by decisions of British prize cases arising during World War I: The Consul Corfitzon (1917) App. Cas. 550; The Baron Stjernblad (1918) App. Cas. 173; The Kronprinzessin Victoria (1919) App. Cas. 261; Kronprinzessin Margareta, 6 Lloyd's Price Cases 105n. (1917); The Antilla, 7 Lloyd's Prize Cases 401

(1918); and an English patent case of the Second World War, In re von Kantzow's Patent (1944) Ch. 318. The cases are persuasive, not only for their decisions but for their reasoning and application of principles. The Trading With the Enemy Act is concerned with captures on land. The law of prize is concerned with captures at sea. Both are facets of the law of war. See Stoehr v. Wallace, 255 U. S. 239 (1921); Learned Hand, J., in Stohr v. Wallace (same case), 269 Fed. 827 (D. C. N. Y. 1920); Mr. Justice Stanley Reed, dissenting on other grounds, in Kaufman v. Societe Internationale Pour Participations Industrielles et Commerciales, S. A., 343 U. S. 156 (1952), at 167n.

In the British prize cases, claimants, citizens of Sweden, were ordered to make discovery under an order or rule of the Court similar in content to Rule 34 of the Federal Rules of Civil Procedure. See The Consul Corfitzon, *supra*, at 551n. (2). Claimants resisted, on the grounds that they were precluded by Swedish law from revealing information or opening their books to foreign powers. The Court struck the claims, holding that neutral claimants must comply with the discovery requirements of the forum. While the substantive law administered by the Prize Court was international law, its practice and procedure were governed by the municipal law of the State from which the Court derived its jurisdiction, and could not be modified

3145 by the municipal law of any other State: The Consul Corfitzon, *supra*. The Court cannot accept the dictates of any municipal law other than its own as to what discovery ought or ought not to be insisted upon either generally or in any particular case. The Baron Stjernblad, *supra*. It is impossible for a Court to allow its investigation of the truth of matters brought before it to be limited by the restrictions of the municipal law affecting one of the parties to the proceedings before it. The Kronprinzessin Victoria, *supra*. The refusal of a foreign government to permit discovery can make no difference to the Court: Kronprinzessin Margareta, *supra*.

A claim may be struck even though the other party has had inspection of many documents besides those relating to the particular matters in question and a different view of the order for discovery is taken by the claimant's government. The Antilla, *supra*. The neutral is as responsible for the actions of his own government as a cargo owner for the action of the master or crew of the vessel on which the cargo is shipped. The Baron Stjernblad, *supra*. If his position is anomalous, it certainly is not due to any defect in the practice of the Court or the law it administers. *Ibid*. If an applicant is the subject of a foreign State and is precluded from giving the necessary information to the Court, that is his misfortune. In re von Kantzow's Patent, *supra*. The rule is the same, whether it is left to his discretion by his government to make discovery and thereby violate his municipal law, as in The Antilla, *supra*, or whether there has been a direct prohibition by his government, as in The Baron Stjernblad, *supra*.

Counsel for plaintiff cites Securities and Exchange Commission v. Minas de Artemisa, S. A., 150 F. 2d 215. (C. C. A. 9th, 1945), for the proposition that a Federal Court of the United States will take into consideration the impact which the laws of a

3146 foreign country may have upon its orders, and will cut or prune them accordingly. That decision is not in conflict with the opinion of the Court in this case. A federal court there ordered a corporation, subject to its jurisdiction to produce in the United States books and records located in Mexico; the Court of Appeals ruled that the order had been improperly drafted, since the laws of Mexico prohibited their removal. The question before the Court was one of accommodation and convenience, not of ultimate production. No secrecy laws were involved, production itself was not resisted; the required books and records could be inspected at the office in Mexico, authenticated copies could be furnished, and the Court of Appeals so directed.

For the reasons stated, this Court finds itself constrained

to decide that an order dismissing plaintiff's suit is required if the Sturzenegger papers are not made available. Such dismissal is not by way of punishment for contempt or for contumacy, for an intentional and wilful flouting of the Court's authority, or for an offense to its dignity. It is rather by way of denying the right of a plaintiff to proceed without obeying established Court procedures. If plaintiff had failed to file a complaint seasonably within the time allowed by law, or had failed to state sufficient facts to show the pleader was entitled to relief, or had filed the complaint before a Court without jurisdiction of the parties or the subject matter, the same result would follow.

The order of dismissal appears to be justified under Rule 37(b)(2)(iii) of the Federal Rules of Civil Procedure. Rule 37(b)(1) provides that a refusal to be sworn or to answer a question may be considered a contempt of Court. Of course,

3147 contempt of Court involves a wilful act. Rule 37(d) enumerates the sanctions which may be imposed for the *wilful* failure to appear or to serve answers. Here the word "wilful" is used. These two rules therefore clearly deal with wilful acts. However, Rule 37(b)(2)(iii) makes no mention of contempt or wilful refusal. The word "refusal" is defined as synonymous with "declination" (Webster's New International Dictionary, 2d Ed., Unabridged, p. 2095). In this case we have noted that plaintiff with the Sturzenegger papers in his actual possession has "refused" or "declined" to exhibit them as ordered by this Court. That plaintiff may have had good reason for its refusal would make the act nontheless a refusal. In the original Advisory Committee Note of 1937 to Rule 37 of the Federal Rules of Civil Procedure, the following appears:

> "The provisions of this rule authorizing orders establishing facts or excluding evidence or striking pleadings, or authorizing judgments of dismissal or default, for refusal to answer questions or permit in-

spection or otherwise make discovery, are in accord with *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, 29 S. Ct. 370, 53 L. Ed. 530; 15 Ann. Cas. 645 (1909), which distinguishes between the justifiable use of such measures as a means of compelling the production of evidence, and their unjustifiable use, as in *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841; 42 L. Ed. 215 (1897), for the mere purpose of punishing for contempt."

Duell v. Duell, 85 App. D. C. 78, 178 F. 2d 683 (1949), cited by plaintiff, is not inconsistent with the Court's power to deal with failure to produce documents, whether wilful or not. In that case the Court rejected the striking of a pleading by reason of an adjudication in contempt for failure of defendant in a divorce suit to produce records. The Court held there was no showing defendant suppressed or failed to produce evidence in his possession which had been ordered produced. It further held that civil contempt proceedings might not be used as the

3148 basis for striking a pleading. No decision was made as to the power of the Court to strike a pleading on motion for failure to produce records in the party's possession as ordered by the Court. In Wittenberg Coal Co. v. Compagnie Havraise Peninsulaire de Navigation a Vapeur, 22 F. 2d 904 (C. C. A. 2d, 1927), the Circuit Court of Appeals for the Second Circuit upheld a decree pro confesso entered under a rule of admiralty for a persistent refusal to answer interrogatories, and said: "The refusal to answer the interrogatories is more than a contempt. It was a failure of the appellant to give information which the appellee was entitled to under the rules in admiralty."

The power of the Court to issue an order of dismissal for failure of a party to produce designated documents has been recognized from the earliest days of the Republic, in Article 15 of the Judiciary Act of September 24, 1789, 1 Stat. 82, 28 U. S. C., §.636 (1946), repealed by the Revised Judicial Code of 1948, 62 Stat. 869 (1948). This Act is the parent of Rule 34 of the Federal Rules of Civil Pro-

cedure. It was repealed by the Judicial Code because it had been superseded by the Federal Rules. 4 Moore's Federal Practice, 2429-2430n, 2428 (2d ed., 1950). The Federal Rules thus establish that the proper time for the inspection of documents is before trial, as an integral part of the purposes of the Rules to narrow and clarify the issues and to ascertain the facts of the case. "The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial. . . . The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise." Hickman v. Taylor, *supra*, at 501, 507.

3149 But apart from dismissal by authority of specific rule of court or statute, a court has inherent power to dismiss a suit, stay a trial or impose other limitations on the right to proceed with trial when it is established a party plaintiff has failed to comply with order of the Court issued pursuant to its rules. See Refior v. Lansing Drop Forge Co., 124 F. 2d 440 (C. C. A. 6th, 1942), cert. den. 316 U. S. 671 (1942); Note, 4 A. L. R. 2d 348. If this were not so, a court would be powerless to enforce its rules and a litigant might ignore them with abandon. In cases where plaintiffs have refused to comply with essential court procedures, the court customarily has stayed the trial until the procedures have been complied with; and if it has later developed with certainty the procedures will not be followed, the Court has denied relief by dismissing the suit.

A final point made by plaintiff may be disposed of briefly. The claim is that an order of dismissal would constitute a denial of due process of law in violation of the Constitution of the United States. Plaintiff has had a hearing. It has had its day in Court. The order is entered upon motion and notice; plaintiff has had full opportunity to comply with the order of the Court. Hammond Packing Co. v. Arkansas, *supra*, clearly establishes

the want of foundation in this contention. Rather it appears to the Court that due process would be denied if a foreign government were to be allowed to frustrate the procedures established in the Courts of the United States.

The attention of the Court has been directed to a statement of the Swiss Federal Attorney on June 25, 1951, as reported in the findings of the Special Master:

> "... we are prepared to release individual documents proved to be indispensable for the suit, insofar as explicit statements are produced for each one of these documents by all the parties having an interest in them
>
> 3150 (banking firm H. Sturzenegger & Co., its clients and other individuals or juridical persons participating), from which it should be clearly evident that there is neither a violation of Art. 273 St. GB (economic espionage) nor of Art. 47 of the Bank Law (bank secrecy). The Office of the Swiss Federal Attorney explicitly reserves itself the right to refuse to release individual documents without stating grounds for this."

For three and one-half years, since the order of July 5, 1949, was promulgated, plaintiff has been on notice that the Sturzenegger documents must be produced. For two and one-half years it has been in legal default of that order. At no time during that long period has it been excused from its duty to produce. It may be, as contended by the Government, this offer by the Swiss Federal Attorney as a means of producing the required papers is illusory. It may also be true attempts should have been made by plaintiff long before this. The Court notes the Special Master has found that obtaining waivers would not appear at any time to offer a solution to the problem of production of the papers. But this Court is of opinion it should extend further opportunity to plaintiff to comply with the order to produce the documents designated. Especially is this true since a Court of the United States has now, apparently for the first time, made clear that full production of the papers is essential to permitting a trial

of this case and cannot be excused because of prohibitions of plaintiff's government. The Court therefore will suspend the effective date of its order of dismissal of plaintiff's complaint for a limited period of about three months to permit plaintiff to apply for release of the documents in accordance with the statement of the Swiss Federal Attorney. If then it develops full disclosures are not permitted, this suit will be dismissed with prejudice so far as plaintiff is concerned.

While the motions before the Court were under advisement, plaintiff filed with the Court a motion to require defendants

3151 to cooperate with plaintiff in preparing applications to the Swiss Federal Attorney for the release of documents. The duty to produce the documents in conformity with the order of the Court rests upon plaintiff, and the Court will not transfer that responsibility to defendants. If plaintiff must seek waivers, it is because its government chooses to enforce a foreign law of privilege, the banker-customer privilege, not recognized in the law of this forum where plaintiff has brought suit. The motion accordingly is denied. The Court assumes defendants will not in any wise obstruct the efforts of plaintiff to secure production of the papers.

Under the decision of the Supreme Court of the United States in Kaufman v. Societe Internationale Pour Participations Industrielles et Commerciales S. A., 343 U. S. 156 (1952), if a final order of dismissal against plaintiff is entered, intervenor plaintiffs may yet maintain their suit, it appearing that they never had possession, custody or control of the pertinent documents.

The Court will make disposal of pending motions as follows:

1. Overrule defendants' exceptions to the Special Master's Report. Grant plaintiff's motion to adopt the said Special Master's Report.

2. Overrule plaintiff's motion to be relieved from pro-

ducing the Sturzenegger papers for inspection and copying as ordered on July 5, 1949.

3. Grant defendants' motion to dismiss plaintiff's suit, provided however, such dismissal shall not become effective until a date about 3 months hence, in order that plaintiff may have further opportunity to produce the Sturzenegger documents as ordered by this Court.

4. Overrule plaintiff's motion to require defendants to cooperate with plaintiff in preparing applications to the Swiss Government for production of the Sturzenegger papers.

3152 5. Grant the motion of intervenor plaintiffs that the dismissal of this suit shall not apply as to their claims.

/s/ BOLITHA J. LAWS,
Chief Judge.

February 19, 1953.

3153 Filed March 6, 1953. Harry M. Hull, Clerk.

Plaintiff's Memorandum for Special Master Regarding 1600 Documents.

This memorandum is submitted to the Special Master with reference to about sixteen hundred documents, sought by defendants' second discovery motion, and said to bear the following S. C. O. numbers:

3527—3796
13188
13191
13193—13941
14156—14206
14330—14631
15151—15154
16393—16621

Plaintiff opposes this phase of the motion upon the following grounds:

(1) Such documents are not in its possession, custody or control.

(2) Most of the documents are not even physically located in any place over which plaintiff exercises any control, and have not been so located since prior to the filing of this civil action.

(3) Such documents do not belong to Chemie, Greutert/Sturzenegger & Cie., or Osmon; that is, they are not documents of any of these entities; and hence, they do not come within Judge Laws' order of July 5, 1949.

(4) Because such documents do not come within Judge Laws' order, defendants are not entitled to their production until and unless (a) they establish
3154 the relevancy and materiality thereof, b) properly designate them(c) show good cause for their production, and (d) prove that they are in the possession, custody or control of plaintiff.

(5) While a small portion of such documents are located on the premises of plaintiff, they are not in the possession, custody or control of plaintiff, but, instead, are in the possession, custody or control of the owner or owners thereof and/or of someone other than the plaintiff.

(6) The documents still on plaintiff's premises (as well as the documents located elsewhere referred to in paragraph 2 hereof) are believed to contain secrets of third parties, the disclosure of which might violate Article 273 of the Swiss Penal Code. Also, for this additional reason, plaintiff does not have control of such papers since consents or waivers of such third parties would have to be obtained before they could be exhibited, assuming all other prerequisites to discovery be present. (See Special Master's Conclusion No. 10, July 9, 1953).

[Signed by counsel for plaintiff.]

Confederation of Switzerland,
Canton of Basel,
Consul of the United States of America

I, Walter Germann, Managing Director of the plaintiff, do solemnly swear that I have read the foregoing memo-

randum and know the contents thereof; and that I verily believe the statements therein made to be true.

/s/ W. GERMANN.

[Sworn to February 26, 1953.]

3155 Filed March 6, 1953. Harry M. Hull, Clerk.

Affidavit of Walter G rmann in opposition to Defendants' Motion Re arding Plaintiff's Books.

Confederation of Switzerland)
Canton of Basle,) sto-wit
Consulate General of the United States of America)

WALTER GERMANN, being first duly sworn on oath deposes and states that he is the Managing Director of the plaintiff corporation and was present on the premises of the plaintiff at Peter Merianstrasse 19, Basle, Switzerland, on the occasions when representatives of the Swiss Compensation Office visited the said premises during the years 1945 and 1946 in connection with the investigation by that office of the plaintiff corporation, and he has read the report of the findings of the investigation of the Swiss Compensation Office, upon the first page of which it is stated that 30 account books of I. G. Chemie were examined; that this affiant knows that 25 account books of I. G. Chemie were so examined, and 5 account books of Osmon, A. G.; that these books comprise the 30 books to which reference is made by the Swiss Compensation Office; that these 30 books were exhibited to defendants' counsel in the summer of 1950 in Switzerland, and defendants made copies thereof.

/s/ W. GERMANN.

[Sworn to February 26, 1953.]

3186 Filed March 19, 1953. Harry M. Hull, Clerk.

Ruling on Motion for Stay.

At a scheduled hearing March 17, 1953 on the Government's Motion for Further Production and its Motion for

Production of the Original Books of Chemie, plaintiff moved for a stay of further proceedings pending actual dismissal, vel non, of the Complaint pursuant to Chief Judge Laws' Opinion of February 19, 1953. No Order has yet been entered on that Opinion. Plaintiff has pointed to a rough draft of an Order prepared by Chief Judge Laws himself which contains a notation at the bottom:

> "(What about staying all proceedings insofar as plaintiff is concerned (blank) and then dismissal with prejudice unless otherwise ordered?)"

This shows the Court is considering the matter of a stay and under these circumstances the Master is reluctant to act. It is not so much a question of jurisdiction as propriety. Any action upon the present application might fix the pattern for future stays, which might have wide repercussions. As the Court itself is apparently considering the matter it would seem desirable for the Master to abstain. Hence the form of the Order will be that the present application for stay be and it is hereby denied without prejudice to the right of plaintiff to apply to the Court within five days from the date hereof.

/s/ Wm. J. Hughes, Jr.,
Special Master.

March 18, 1953.

3187 Filed March 23, 1953. Harry M. Hull, Clerk.

Order.

Upon consideration of plaintiff's motion of March 17, 1953 for a stay of further proceedings pending actual dismissal vel non, of the complaint pursuant to the opinion of the Court, per Chief Judge Laws, dated February 19, 1953, and after hearing the parties, It Is Ordered that the motion be, and it hereby is, denied without prejudice to

the right of plaintiff to apply to the Court by March 23, 1953.

March 19, 1953.

/s/ WM. J. HUGHES, JR.,
Special Master.

Filed March 31, 1953. Harry M. Hull, Clerk.

3191 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. ETC. (I. G. CHEMIE),
Plaintiff,

vs.

HERBERT BROWNELL, JR., *et al.*,
Defendants.

Order.

Upon consideration of plaintiff's motion, filed October 15, 1952, for the adoption of the Report of the Special Master submitted pursuant to this Court's Order of March 1, 1951; of defendants' exceptions thereto, filed September 9, 1952; of plaintiff's motion, filed November 28, 1950, for reconsideration of plaintiff's motion of June 22, 1950, to be relieved from that portion of the Court's order of July 7, 1949, requiring the plaintiff to produce for inspection by the defendants the records of H. Sturzenegger & Cie.; of defendants' motion, filed October 31, 1950, for the dismissal of plaintiff's complaint, under Federal Rule 37(b), for the failure of plaintiff to produce the papers of H. Sturzenegger & Cie.; of plaintiff's motion, filed February 5, 1953, to require defendants to cooperate with plaintiff in preparing applications to the Swiss Federal Attorney etc.; and of the amended motion of plaintiffs-intervenors Kaufman, filed September 19, 1952, to limit

sanctions under Federal Rule 37; it is, by the Court, this 31st day of March, 1953,

ORDERED:

1. That defendants' exceptions, filed September 9, 1952, to the Report of the Special Master submitted pursuant to the Court's order of March 1, 1951, be, and hereby are, overruled;

3192 2. That plaintiff's motion, filed October 15, 1952, for the adoption of the Report of the Special Master be, and hereby is, granted and the said Report of the Special Master be, and it hereby is, adopted;

3. That plaintiff's motion, filed November 28, 1950, for reconsideration of plaintiff's motion of June 22, 1950, to be relieved from that portion of the Court's order of July 5, 1949, requiring the plaintiff to produce for inspection by defendants the records of H. Sturzenegger & Cie. be, and hereby is, granted, and that upon such reconsideration plaintiff's motion to be relieved from their production be, and hereby is, denied;

4. By reason of plaintiff's continued failure for more than two years to comply with the aforesaid order of Court of July 5, 1949, the Court concludes, as a matter of law, that plaintiff is in default and its case is subject to dismissal with prejudice. However, since there is indicated of record the documents ordered to be produced for inspection and copying may yet be produced by permission of the authorities of the Government of Switzerland, which previously has forbidden their production, and accordingly, it is reasonable to grant limited further time for such production, this Court in the exercise of its discretion grants until June 15, 1953, within which plaintiff may comply with the said order of this Court. The Court accordingly orders that defendants' motion to dismiss plaintiff's case shall be held in abeyance until said June 15, 1953. Unless on or before said June 15, 1953, there has been compliance with order of July 5, 1949, an order will be entered dismissing plaintiff's suit with prejudice;

5. That plaintiff's motion, filed February 5, 1953, to require defendants to cooperate with plaintiff in preparing

3193 applications to the Swiss Federal Attorney, etc., be, and hereby is, denied;

6. That the amended Motion of plaintiffs-intervenors Kaufman, filed September 19, 1952, to limit sanctions under Federal Rule 37 be, and hereby is, granted, it being hereby determined that this order shall not apply to the claims of intervenors Kaufman and Attenhofer or to the claims of any other stockholders hereafter properly admitted as intervenors in this cause.

/s/ BOLITHA J. LAWS,
Chief Judge.

3194 Filed May 12, 1953. Harry M. Hull, Clerk.

Order Staying Proceedings Before Special Master.

Upon consideration of the motion of the plaintiff to stay further proceedings before the Special Master, insofar as plaintiff is concerned, and after hearing counsel for the respective parties, it is, by the Court, this 12th day of May, 1953,

Ordered that said proceedings be, and they hereby are, stayed until June 22, 1953, insofar as plaintiff is concerned.

/s/ BOLITHA J. LAWS,
Chief Judge.

3195 Filed June 8, 1953. Harry M. Hull, Clerk.

Motion for Extension of Time Relating to Chief Judge Laws' Order of March 31, 1953.

Comes now the plaintiff, by its undersigned attorneys, and moves the Court (Chief Judge Laws) to extend for a reasonable time the period defined in paragraph 4 of its order of March 31, 1953, which period expires on June 15, 1953.

The ground of this motion is that the plaintiff is endeavoring in good faith to comply with the Court's Order of July 5, 1949, and further, reasonable time is required in connection therewith.

The steps already taken and the reactions now awaited, are set forth in the annexed affidavit of John J. Wilson which is filed in support of this motion and is made a part hereof.

[Signed by counsel for plaintiff].

3197 Filed June 8, 1953. Harry M. Hull, Clerk.

Affidavit in Support of Annexed Motion.

DISTRICT OF COLUMBIA, ss:

I, John J. Wilson, the attorney of record for the plaintiff in the above entitled cause, do solemnly swear as follows:

After Chief Judge Laws' decision was handed down on February 19, 1953, many hours and days were consumed in study of and conferences concerning its consequences and the courses to be pursued by the plaintiff, and prior to the order of March 31, 1953, plaintiff's counsel were uncertain as to whether the Court would enter an order which would make an appeal therefrom immediately necessary, and if so, whether, if an appeal were taken, the period of grace offered by the Court could be availed of with practical benefits in view of technical procedural phases arising once a notice of appeal be filed.

As time went on after the decision of February 19, 1953, and an order was not entered thereon, it was deemed advisable, as long as an appeal was not yet required, to begin the pursuit of appropriate steps in Switzerland with the Government there, and to review, as well, the problem of waivers of banking secrets respecting the Stuzzenegger papers in the light of the Swiss Federal Attorney's sug-

gestion contained in his opinion of June 25, 1951. Accordingly, we wished to confer with plaintiff's Swiss attorney Dr. Edmund Wehrli, and he came over here on March 1[illegible] 1953 for that purpose.

3198 Counsel for the defendants and affiant had appeared before Chief Judge Laws on March 16, 195[illegible] to discuss the form of an order, and it seemed to affiant that the Court would soon thereafter resolve the problem with the likelihood that the order to be entered would not be a "final" one in an appealable sense. Consequently, it was the decision of plaintiff's attorneys that an application should be promptly prepared and submitted to the Swiss Federal Attorney, accompanied by Chief Judge Laws' opinion, in an effort to accomplish the release of all the confiscated papers. The matter of seeking waivers regarding the papers was discussed, but decision thereon was deferred until after the Swiss Federal Attorney should have passed upon the new application which would formally and squarely present to him the single picture of the consequences to the plaintiff in the United States of the continued enforcement of his seizing order.

Dr. Wehrli promptly returned to Switzerland and prepared such an application, and on March 31, 1953, he filed the same with the Swiss Federal Attorney, Dr. Luthi, for the release of all the so-called Sturzenegger papers in order to comply with Chief Judge Laws' decision. A photostatic copy of said application in its original, German text, and an English translation thereof, are annexed hereto, marked exhibits A and B and made a part hereof.

On April 14, 1953, the Swiss Federal Attorney rendered his decision denying the aforesaid application and refusing to release said papers from his confiscation order of June 15, 1950. A photostatic copy of said decision in its original, German text, and an English translation thereof, are annexed hereto, marked exhibits C and D and made a part hereof.

After the decision of the Swiss Federal Attorney was handed down, further conferences with Dr. Wehrli were

indicated; and at our request, he came over on April 23, 1953. The question of an appeal to the superior of the Federal Attorney was canvassed, including the fact that the former head of the Federal Justice and Police Department, Dr. Von Steiger, had retired and he had been succeeded by Dr. Feldmann who had not theretofore adversely passed upon the question. It was determined that an appeal should be

3199 prosecuted to Dr. Feldmann. Again, the matter of waivers came up for discussion, and it was determined that they should be solicited, although the time to do so was not fixed. Among other things, it was reasoned that if Dr. Feldmann should reverse the Federal Attorney, all the Sturzenegger records would be released, whereas, if waivers were solicited, there is always the possibility that some person might not consent.

Dr. Wehrli returned to Switzerland on April 26, 1953; and on April 29, 1953, an appeal was prosecuted by him from the decision of the Swiss Federal Attorney to Dr. Feldmann, the Head of the Federal Justice and Police Department of the Confederation of Switzerland, who is the official superior of the Swiss Federal Attorney and the proper one to whom an appeal is taken, according to Swiss procedure, from a decision of said Federal Attorney. A photostatic copy of said appeal in its original German text, and an English translation thereof, are annexed hereto, marked exhibits E and F and made a part hereof.

On May 28, 1953, Dr. Feldmann, as the Head of the Federal Justice and Police Department, rendered his decision affirming and upholding the action of his subordinate, the Federal Attorney. A photostatic copy of said decision in its original German text, and an English translation thereof, are annexed hereto, marked exhibits G and H, and made a part hereof.

On the last page of the decision of Dr. Feldmann it is stated:

> "As hitherto, the Office of the Federal Attorney will examine—on the basis of special application—whether individual documents can be exempted from the seizure."

In view of the decision of Dr. Feldmann, includi the above-quoted suggestion approving the idea theretofo expressed by the Federal Attorney, and in view of the fa that time was getting short, it was decided to proceed i mediately in two directions at the same time, namely, solicit waivers, and to appeal from Dr. Feldmann's dec sion to the Federal Council.

As to the former, reference should be made to the fo lowing:

3200 On page 260 of the Transcript, dated May 23, 195 in the "good faith proceedings" before the Specia Master, Mr. David Schwartz stated as follows:

> "Yesterday too, your Honor asked, and in the cours of conversation it developed that we undertook to sup ply a list of the companies and individuals as to whon we believe, for reasons in the record or known or prov able, either a waiver should have been made or coul have been made, and I have such a list and I would like to read it into the record if I may."

Thereupon, beginning on page 261 and continuing through page 282, Mr. Schwartz recited such a list. This list is repeated by the Special Master on pages 59-60 of his Report dated December 4, 1951.

On May 30, 1953, Dr. Wehrli sent identical letters to those who were named by Mr. Schwartz, requesting the respective addressees (a) to consent to the production of the Sturzenegger records relating to them, and (b) to authorize plaintiff and the Sturzenegger Bank to submit such consents, as well as the records covered thereby, to the Office of the Swiss Federal Attorney in order to endeavor to obtain their release from the preventive seizure. A copy of said letter in its original, German text, and a copy of an English translation thereof, are annexed hereto, marked Exhibits I and J, and made a part hereof.

As stated by Dr. Wehrli, such consents, when received, and the records covered thereby, must be submitted to the Office of the Swiss Federal Attorney for the determination

of that official as to whether and to what extent he will release such papers from his preventive order.

Since this affiant has been informed that Dr. Wehrli dispatched over one hundred and twenty of such letters, and that documents in excess of fifty thousand may be involved, it is evident that the efforts of the plaintiff to comply with Chief Judge Laws' order cannot be completed by June 15, 1953, and that additional time will be required.

3201 On June 4, 1953, and in due time, Dr. Wehrli lodged with the Federal Council of the Confederation of Switzerland an appeal from the aforesaid decision of Dr. Feldmann. A photostatic copy of said appeal in its original, German text, and an English translation thereof, are annexed hereto, marked Exhibits K and L, and made a part hereof.

The Federal Council is the highest executive authority in Switzerland, consisting of seven members who are known as the Federal Councilors and who are the heads of the respective seven executive departments of the Swiss Government. Dr. Feldmann is himself a Federal Councilor, and thus a member of the Federal Council. Appeals from adverse decisions of the head of a federal department are taken to the Federal Council. Consequently, the appeal was so taken in this instance. There is no further administrative or executive review of the matter, and there may be no judicial review in Switzerland of the action or decision of the federal executive departments or of the Federal Council itself.

It cannot be stated when the decision of the Federal Council will be handed down, but it seems unlikely that it will be before June 15, 1953.

/s/. JOHN J. WILSON.

[Sworn to June 8, 1953.]

3205

Exhibit B.

Translation

Zurich, 31st March, 1953.
Bahnhofplatz 14
Post Box Zurich 23.

Dr. E. Wehrli-Bleuler
Dr. Felix Wiget
Dr. Mark Hauser
lawyers
Members of the Swiss
Association of Lawyers
Telephone: (051) 23 26 36
Post cheque account: VIII 30442
Telegrams: Wehrlijur

To the
Swiss Federal Attorney
Prof. Dr. W. Luthi
Bundeshaus,
B e r n e

Sir,

In the name of the
Internationale Industrie- and Handelsbeteiligungen A. G.
Peter Merianstr. 19, Basle,
(hereinafter abbreviated as Interhandel)
and of the
banking firm H. Sturzenegger & Co.,
St. Jakobstr. 46, Basle,

I refer to your order of 15th June, 1950, by which you seized the business records or books of the banking firm H. Sturzenegger & Co., in Basle, the production of which was ordered by the United States District Court for the District of Columbia on 5th July, 1949, and prohibited the said banking firm until further notice to hand over to third parties any business records or copies of these or to grant third parties inspection of their business records. I also

refer to my application to you on 2nd April, 1951, your reply of 25th June, 1951, my complaint to the head of the Federal Department of Justice and Police of 17th July, 1951, and the decision of the Federal Department of Justice and Police of 6th September, 1951.

On 31st October, 1950, the American Government, or rather the U. S. Attorney General as the party opposing Interhandel, filed a motion for the dismissal of the suit on the grounds that Interhandel had not attempted in good faith to comply with the order of the American judge of 5th July, 1949, for the production of records. Thereupon the U. S. District Court for the District of Columbia instructed the Special Master to investigate whether Interhandel

3206 had acted in good faith and whether the seizing order of the Office of the Swiss Federal Attorney of 15th June, 1950, is in accordance with Swiss law.

In his report of 4th December, 1951, the Special Master confirmed that Interhandel had attempted in good faith to obtain the production of the Sturzenegger records and also that your seizure order of 15th June, 1950, is in accordance with Swiss law.

On 19th February, 1953, there was issued an opinion of the U. S. District Court for the District of Columbia. With this the American judge approved to its full extent the report of the Special Master but at the same time stated that Interhandel's suit should be finally dismissed in the event that the latter should not produce within about 3 months the so-called Sturzenegger documents in accordance with his court order of 5th July, 1949. I enclose the opinion of 19th February, 1953.

I have just heard that on 31st March the American judge ordered that the suit shall be dismissed unless Interhandel should produce the records by 15th June, 1953.

I therefore request that Interhandel and the banking firm H. Sturzenegger & Co. should be permitted to comply with the court order of the U. S. District Court for the

District of Columbia of 5th July, 1949, and the opinion of 19th February, 1953, to their full extent.

Yours truly,

sig. WEHRLI.

Enclosure: Opinion of 19.2.1953.
By registered mail.

3209

Exhibit D.

Translation

Berne, 14th April 1953.

SCHWEIZERISCHE
BUNDESANWALTSCHAFT
MINISTERE PUBLIC FÉDÉRAL
MINISTERO PUBLICO
DELLA CONFEDERAZIONE
No. C. 16.10205/Vw/rc.
By Registered Mail

Dr. E. Wehrli-Bleuler
lawyer
Zurich
Bahnhofplatz 14

Sir,

As the lawyer representing the *Internationale Industrie- & Handelsbeteiligungen A. G.*, Peter Merianstrasse 19 in Basel (Interhandel) and the *banking firm H. Sturzenegger & Cie.*, St. Jakobstrasse 46 in Basle, and with reference to the various previous events in this matter, you addressed an application to me that Interhandel and the banking firm Sturzenegger should be permitted to comply to its full extent with the court order of the U. S. District Court for the District of Columbia of 19th February, 1953, relating to the production of records.

The request submitted is nothing but an application for the reconsideration of my order of 15th June, 1950, by which the whole of the business records or books of the banking firm H. Sturzenegger & Cie. in Basel, the produc-

tion of which was ordered by the American judge, were confiscated and the direction of the bank was prohibited until further notice from handing over any business records or books or copies of these to third parties or from allowing third parties to inspect their records.

In view of the lack of new facts I have already dismissed a first application for reconsideration on 25th June, 1951. This caused you to make a complaint to the Federal Justice and Police Department. In the decision of the Department the fact was referred to that even if there had been formal ground for an intervention, the complaint could not have been approved.

3210 The Federal Justice and Police Department also referred to its order of 25th June, 1951, with which it refused to empower the Swiss Federal Attorney to testify before the American judge. The legitimacy of the confiscation was examined there and confirmed by the department.

Since the dismissal of your first application for reconsideration by the Swiss Federal Attorney and the Federal Justice and Police Department no new facts have occurred which would bring about a decrease in the risk of violating secrecy which was the decisive reason for the confiscation order. Now that the business management of Interhandel and indirectly also the banking firm Sturzenegger & Cie have been put under increased pressure by the American judge, the illegal production of records of the banking firm Sturzenegger & Cie. before the American court and thus the violation of the provisions relating to prohibited espionage (Art. 273 St. G. B.) and of bank secrecy must be reckoned with to an even greater extent.

In these circumstances I regret that I cannot grant this second application for reconsideration of 31st March, 1953, either.

Yours truly,

THE SWISS FEDERAL ATTORNEY,
sig. LUTHY.

3215 **Exhibit F.**

Translation

Copy

Zurich, 29th April 1953.
Bahnhofplatz 14

Dr. E. Wehrli Bleuler
Dr. Felix Wiget
Dr. Mark Hauser
Lawyers

To the Head of the
Federal Justice & Police Department,
Federal Councillor, Dr. M. Feldmann,
B e r n e .

Dear Sir,

In the name and on the authority of the *Internationale Industrie- und Handelsbeteiligungen A. G.*, Peter Merianstrasse 19, Basle,
(hereinafter abbreviated as Interhandel)
and of the
banking firm *H. Sturzenegger & Co.*, St. Jakobstrasse 46, Basle,
I herewith file a

c o m p l a i n t

against the decision of the
Office of the Swiss Federal Attorney of 14th April, 1953,
with the prayer that:

The disputed decision of the Office of the Swiss Federal Attorney should be rescinded, the motions of the undersigned's petition of 31st March, 1953, to the Swiss Federal Attorney should be granted and consequently that:

Interhandel and the banking firm H. Sturzenegger & Co. should be permitted to comply to its full extent with the court order of the U. S. District Court for the District of Columbia of 5th July, 1949, the opin-

ion of Judge Laws of 19th February, 1953, and also the order of Judge Laws of 31st March, 1953.

3216 I am taking the liberty of stating the following as grounds for this:

I refer to my petition of 31st March, 1953, to the Swiss Federal Attorney, Prof. W. Lüthi, and briefly summarize the facts of the case as follows:

In Interhandel's suit for the release of its assets vested in America filed against the U. S. Attorney General, the U. S. District Court for the District of Columbia in Washington on 5th July, 1949, ordered inter alia the production of all records of the banking firm H. Sturzenegger & Co. in Basle. On 15th June, 1950, the Office of the Swiss Federal Attorney seized these records, considering that by this preventive measure it would prevent prohibited economic espionage in the sense of Art. 273 Swiss Penal Code and a violation of bank secrecy in the sense of Art. 47 Banking Law. An application by the undersigned to the Office of the Swiss Federal Attorney of 2nd April, 1951, to rescind or otherwise modify the said order was rejected by the Office of the Federal Attorney on 25th June, 1951. My complaint against this decision to the Head of the Swiss Justice and Police Department of 17th July, 1951, was rejected on 6th September, 1951.

After the taking of extensive testimony on the question of Interhandel's good faith in its efforts to produce the so-called Sturzenegger records, the U. S. District Court for the District of Columbia in its opinion of 19th February, 1953, although it recognized absolutely that Interhandel had acted in good faith, all the same stated that its suit would be dismissed should the Sturzenegger documents not be produced. With the order of 31st March, 1953, the same Judge set a term for Interhandel to produce the Sturzenegger records by not later than 15th June, 1953, and ordered: "Unless on or before said June 15, 1953, there has been compliance with order of July 5, 1949, an-

order will be entered dismissing plaintiff's suit with prejudice": I move reference to the records of the Office of the Swiss Federal Attorney.

3217 This order shows the acute danger for Interhandel's legal position and interests, for in not producing the records it risks loosing its suit for procedural reasons without any examination of the merits of the case by the American judge. That is an extraordinary situation which justifies a re-examination of the seizing order and attitude of the Office of the Swiss Federal Attorney by the Swiss Justice and Police Department as well. The present complaint is based on the fact that under the present circumstances the order of the Office of the Federal Attorney of 15th June, 1950, and its position of 14th April, 1953, take an incomplete and erroneous view of the factual background and are improper. I therefore request that the complaint should be approved and my clients permitted to comply to their full extent with the order of the U. S. District Court for the District of Columbia of 5th June, 1949, and of its opinion of 19th February, 1953, and order of 31st March, 1953.

I remain,

Yours truly,

Enclosure: copy
By registered mail.

3221 **Exhibit H.**

Translation

FEDERAL DEPARTMENT OF JUSTICE AND POLICE

Berne, 28th May, 1953.

DECISION

in the appeal matter Internationale Industrie- und Handelsbeteiligungen AG., Basle, and banking firm H. Sturzenegger & Co., Basle, against the Office of the Swiss Federal Attorney, relating to reversal of seizure order.

In the name of the Internationale Industrie- und Handelbetwiligungen AG., Peter Merienstrasse 19, Basle, and of the banking firm H. Sturzenegger & Co., St. Jakobstrasse 46, Basle, Dr. E. Wehrli-Bleuler, Lawyer, Bahnhofplatz 14, Zurich, filed an appeal by petition of 29th April, 1953, with the Federal Department of Justice and Police against the decision of the Office of the Swiss Federal Attorney of 14th April, 1953, in which the latter rejected an application for reconsideration made by the appellant and directed at the lifting of the seizure order of 15th June, 1950.

In this the appellant moved:

"The disputed decision of the Office of the Swiss Federal Attorney should be rescinded, the motions of the undersigned's petition of 31st March, 1953, to the Swiss Federal Attorney should be granted and consequently that:

Interhandel and the banking firm H. Sturzenegger & Co. should be permitted to comply to its full extent with the court order of the U. S. District Court for the District of Columbia of 5th July, 1949, the opinion of Judge Laws of 19th February, 1953, and also the order of Judge Laws of 31st March, 1953."

3222 The appellant's lawyer gives the following grounds for this request:

"In Interhandel's suit for the release of its assets vested in America, filed against the U. S. Attorney General, the U. S. District Court for the District of Columbia in Washington on 5th July, 1949, ordered inter alia the production of all records of the banking firm H. Stürzenegger & Co. in Basle. On 15th June, 1950, the Office of the Swiss Federal Attorney seized these records, considering that by this preventive measure it would prevent prohibited economic espionage in the sense of Art. 273 Swiss Penal Code and a violation of bank secrecy in the sense of Art. 47 Banking law. An application by the undersigned to the Office of the Swiss Federal Attorney of 2nd April, 1951, to rescind or otherwise modify the said order was rejected by the Office of the Federal Attorney on 25th June, 1951. My complaint against this decision

3222

to the Head of the Swiss Justice and Police Department of 17th July, 1951, was rejected on 6th September, 1951.

After the taking of extensive testimony on the question of Interhandel's good faith in its efforts to produce the so-called Stürzenegger records, the U. S. District Court for the District of Columbia in its opinion of 19th February, 1953, although it recognized absolutely that Interhandel had acted in good faith, all the same stated that its suit would be dismissed should the Stürzenegger documents not be produced. With order of 31st March, 1953, the same Judge set a term for Interhandel to produce the Stürzenegger records by not later than 15th June, 1953, and ordered: Unless on or before said June 15, 1953, there has been compliance with order of July 5th, 1949, an order will be entered dismissing plaintiff's suit with prejudice. I move reference to the records of the Office of the Swiss Federal Attorney.

3223

"This order shows the acute danger for Interhandel's legal position and interests for in not producing the records it risks losing its suit for procedural reasons, without any examination of the merits of the case by the American judge. That is an extraordinary situation which justifies a reexamination of the seizing order and attitude of the Office of the Swiss Federal Attorney by the Swiss Justice and by Police Department as well. The present complaint is based on the fact that the order of the Office of the Federal Attorney of 15th June, 1950, and its position of 14th April, 1953, take an incomplete and erroneous view of the factual background and are improper."

The Department takes the following into consideration in this matter:

a) *From the formal point of view:* The matter to be dealt with is an administrative appeal within the purview of Art. 23(2) of the Federal Law relating to the Organization of the Federal Administration of 26th March, 1914, according to the wording of Art. 166 of the Federal Law relating to the Organization of the Federal Administration of Justice of 16th December, 1943. The appeal was filed within the 30-day time limit.

b) *From the material point of view:* The sole new fact referred to by the appellant is the preliminary decision pronounced by the U. S. judge according to which the Internationale Industrie- und Handelsbeteiligungen AG. has to produce the documents of the bank Sturzenegger by 15th. June, 1953, otherwise its suit against the U. S. Department of Justice will be dismissed with costs for formal reasons.

In agreement with the position taken by the Office of the Federal Attorney in its decision of 14th April, 1953, which is attacked in the present appeal, the Department establishes that the seizure was pronounced at that time in order to prevent a violation of the provisions relating to prohibited espionage (Art. 273 StGB)

3224 and of bank secrecy (Art. 47 Bank Law). The grounds which led to the ordering of the seizure are still in existence today; the above-mentioned threat of the U. S. judge has no influence upon this. The risk that officials of the firm Sturzenegger might act in violation of Art. 273 StGB and of the provisions of the Bank Law has become even more acute, because since that time an even stronger pressure on the part of the American authorities can be established.

The decision of the Office of the Federal Attorney is still appropriate to the circumstances. The lifting of the seizure can not be considered by the Department.

As hitherto, the Office of the Federal Attorney will only examine—on the basis of special application—whether individual documents can be exempted from the seizure.

For the above reasons it is

recognized:

1. That the appeal lodged by the Internationale Industrie- und Handelsbeteiligungen AG., Basle, and the banking firm H. Sturzenegger & Co., Basle, is dismissed.

2. That the cost of the procedure to the sum of: decision fee Frs. 50.-, chancellery fee Frs. 13.50, plus postage ex-

penses, shall be borne by the complainant and payment levied c.o.d.

3. That 2 copies be sent to Mr. E. Wehrli-Bleuler, lawyer, Bahnhofplatz 14, Zurich, attention the complainant, and also to the Office of the Federal Attorney.

FEDERAL JUSTICE AND POLICE DEPARTMENT
sig. Feldmann

3228

Exhibit J.

Translation

DR. E. WEHRLI-BLEULER
DR. FELIX WEBER
DR. MARK HAUSER
Lawyers

ZURICH, 30th May, 1953
Bahnhofplatz 14
Post Box Zurich 23

Members of the Swiss
Association of lawyers
Tel. (051) 23 26 36.

Post cheque account VIII 30442
Telegrams Wehrlijur

The Internationale Industrie- & Handelsbeteiligungen A. G., Peter Merianstr. 19, Basle, (Societe Internationale pour Participations Industrielles et Commerciales S. A.) which was formerly entitled Internationale Gesellschaft fur chemische Unternehmungen A. G. (*I. G. Chemie*) and Societe Internationale pour Entreprises Chimiques S. A. (I. G. Chemie) and is now abbreviated as *Interhandel*, has instructed me to approach you with the following request:

Interhandel is carrying on before the United States District Court for the District of Columbia in Washington, a suit against the Attorney General of the United States as successor to the Alien Property Custodian, for the release of its assets vested in the United States, particularly its

majority participation in the General Aniline & Film Corporation, New York.

In this suit the American judge ordered on July 5, 1949, inter alia the production of all records of the banking firm H. Sturzenegger & Co. in Basle. However, the Office of the Swiss Federal Attorney seized these records as a preventive measure on 15th June, 1950, in order to prevent prohibited economic espionage within the meaning of Art. 273 of the Swiss Penal Code and a violation of the bank secrecy within the meaning of Art. 47 of the Swiss Bank Law. On 31st March, 1953, the American Judge set Interhandel a term for the production of these records by not later than 15th June, 1953, with the threat that should the

3229 records not have been produced by then, Interhandel's suit would be dismissed.

Interhandel wishes to do everything possible to comply with the order of the American judge and therefore intends to request the Office of the Swiss Federal Attorney to consent to the production of those records of the banking firm H. Sturzenegger & Co. for the production of which all parties participating in or affected by the records explicitly give their consent. The representative of the U. S. Attorney General has put on record in the suit in Washington from which companies and individuals he believes it should be possible to obtain a waiver of the secrecy right and in doing so has mentioned your name.

I therefore request you to consent in this sense to the production, in the suit of Interhandel versus the United States Attorney General before the District Court for the District of Columbia, of all the records of the banking firm H. Sturzenegger & Co. which directly or indirectly affect or touch you and to authorize Interhandel and the banking firm H. Sturzenegger & Co. to submit to the Office of the Swiss Federal Attorney your declaration of consent as well as the records covered by it, in order to endeavour to obtain their release from the preventive seizure. Solely rec-

ords before—i. e. up to and including—5th November, 1945, would be affected.

In view of the term set by the American judge of 15th June, 1953, I would be very much obliged to you if you would reply as promptly as possible.

Yours truly,

In the name of and as lawyer of
INTERNATIONALE INDUSTRIE- UND HANDELS-BETEILIGUNGEN A. G.;
sig. Wehrli

By registered mail

3235 **Exhibit L.**

Translation

Dr. E. Wehrli-Bleuler
Dr. Felix Wiget
Dr. Mark Hauser
lawyers

Members of the
Swiss Association
of Lawyers

Zurich, June 4th, 1953

To the
Swiss Federal Council,
Berne

To the Honorable, the President of the Confederation,
To the Honorable Members of the Federal Council:

In the name of and pursuant to a power of attorney given to me by
The Internationale Industrie- und Handel-beteiligungen A. G.
Peter Merianstr. 19, Basel,
(hereinafter called Interhandel)
and by the

banking firm H. Sturzenegger & Cie., St. Jakobstrasse 46, Basel,

I am herewith lodging an

appeal

from the decision of

The Federal Department of Justice and Police, dated May 28, 1953

with the following *request:*

> That the disputed decision of the Federal Department of Justice and Police of May 28, 1953 be reversed and that the appeal from the decision of the Office of the Swiss Federal Attorney of April 14, 1953 be accordingly approved, and that, therefore,
>
> Interhandel and the banking firm H. Sturzenegger & Cie. be permitted to comply fully with the order of the U. S. District Court for the District of Columbia of July 5, 1949, with the Opinion of Judge Laws of February 19, 1953, and with the order of Judge Laws of March 31, 1953.

To *justify* this appeal I first of all move that the files of the Federal Department of Justice and Police and of the Office of the Swiss Federal Attorney be referred to, and I further beg to state the following:

For the purpose of obtaining the release of its assets vested in the U. S., Interhandel is engaged in a law suit in the United States District Court for the District of Columbia in Washington against the Attorney General of the United States as successor to the Alien Property Custodian. In the course of this law suit the American judge ordered on July 5, 1949 among other things that all records of the banking firm H. Sturzenegger & Cie. in Basel be produced for inspection.

On June 15, 1950 the Office of the Swiss Federal Attorney confiscated these records in order to prevent prohibited economic espionage in the sense of Article 273 of the Swiss Penal Code and to prevent a violation of bank secrecy in the sense of Article 47 of the Swiss Banking

3236 Act. A request addressed to the Office of the Swiss Federal Attorney by the undersigned on April 2 1951, asking that said order of June 25, 1951 be countermanded or modified, was rejected, and an appeal from that order lodged on July 17, 1951 with the Head of the Federal Department of Justice and Police was also rejected on September 6, 1951.

It is quite true that after hearing voluminous evidence on the question of Interhandel's good faith in its efforts to produce the so-called Sturzenegger papers, the U. S. District Court for the District of Columbia unqualifiedly recognized in its opinion of February 19, 1953 that Interhandel had acted in good faith. That opinion, however, already declared that Interhandel's complaint would nevertheless be dismissed in the event that the Sturzenegger documents should not be produced. In his order of March 31, 1953 the American judge accordingly set the time until June 15, 1953 within which the Sturzenegger papers should be produced, and he stated in that connection: "Unless on or before said June 15, 1953, there has been compliance with order of July 5, 1949, an order will be entered dismissing plaintiff's suit with prejudice."

In case of nonproduction of the Sturzenegger records Interhandel thus faces dismissal of its complaint by the American judge on procedural grounds, without any consideration of the merits of its case.

Under these circumstances, Interhandel is compelled to submit to the Federal Council, as such the order of the Office of the Swiss Federal Attorney and of the Federal Department of Justice and Police, as the extraordinary situation and danger which threatens Interhandel's legal position and its interests justify a reconsideration by the highest authorities of the confiscation order and of the attitude of the lower authorities. The present appeal is based upon the premise that the order of the Federal Attorney's Office of July 15, 1950, the latter's opinion of April 14, 1953 and the decision of May 28, 1953 of the Federal Depart-

ment of Justice and Police take an incomplete and erroneous view of the factual background under the present circumstances as above described, and, therefore, that they are inappropriate.

I therefore submit that this appeal be granted and that my clients be permitted to comply in full with the order of the American judge of July 5, 1949, with his opinion of February 19, 1953 and with his order of March 31, 1953.

Respectfully submitted,

(Signed:) Wehrli

Exhibits:

1. Decision of the Federal Department of Justice and Police of May 28, 1953.

2. Duplicate of this appeal.

By registered mail.

3238 Filed June 19, 1953. Harry M. Hull, Clerk.

Order Extending Time in the Order of March 31, 1953.

Upon consideration of plaintiff's motion, filed herein June 8, 1953, for an extension beyond June 15, 1953, of the time fixed in paragraph 4 of the Court's order dated March 31, 1953, and after hearing counsel for plaintiff and for defendants, and good cause being shown, it is, by the Court, this 19 day of June, 1953

ORDERED, that said motion be and it is hereby granted, and the time fixed in paragraph 4 of the Court's order of March 31, 1953 as expiring on June 15, 1953 is hereby extended until July 15, 1953.

/s/ BOLITHA J. LAWS,
Chief Judge.

3239 Filed June 19, 1953. Harry M. Hull, Clerk.

Order Extending Stay As to Plaintiff.

Upon consent of the parties, given in view of the Court's order of this day extending until July 15, 1953 the time specified in the 4th paragraph of the Court's order of March 31, 1953,

It Is Ordered that the stay granted plaintiff by order of this Court dated May 12, 1953, be and it is hereby extended until July 22, 1953.

/s/ Bolitha J. Laws,
Chief Judge.

June 19, 1953.

3240 Filed July 14, 1953. Harry M. Hull, Clerk.

Motion for Further Extension of Time Relating to Chief Judge Laws' Order of March 31, 1953.

Comes now the plaintiff, by its undersigned attorneys, and moves The Court (Chief Judge Laws) to extend until September 15, 1953, the period defined in paragraph 4 of its order of March 31, 1953, which period, as heretofore extended, expires on July 15, 1953.

The ground of this motion is that the plaintiff is still endeavoring in good faith to comply with the Court's Order of July 5, 1949, and further, reasonable time is required in connection therewith.

The further steps taken, their present results and anticipated developments are set forth in the annexed affidavit of Edmund Wehrli-Bleuler which is filed in support of this motion and is made a part hereof.

[Signed by counsel for plaintiff]

To David Schwartz, Esq.
Attorney for Defendants:

Please take notice that the foregoing motion will come on for hearing at the convenience of Chief Judge Laws.

WHITEFORD, HART, CARMODY & WILSON
By JOHN J. WILSON,
Attorneys for Plaintiff.

I hereby certify that on the 14th day of July, 1953, copies of the foregoing motion papers were delivered to the office of David Schwartz, Esq., attorney for the defendants.

JOHN J. WILSON.

3241 Filed July 14, 1953. Harry M. Hull, Clerk.

Affidavit in Support of Annexed Motion.

DISTRICT OF COLUMBIA, ss:

I, Edmund Wehrli-Bleuler, being first duly sworn, state as follows:

I am a practicing lawyer at Zürich, Switzerland, and am acting as attorney in Switzerland for the plaintiff named above, as well as for the banking firm of H. Sturzenegger & Co., in respect of the efforts which are being made in Switzerland to comply with this Court's orders for the production by the plaintiff of the Sturzenegger papers, copies of which orders—July 5, 1949, March 31, 1953 and June 19, 1953—this affiant is familiar with.

I have read and am familiar with the affidavit of John J. Wilson, dated June 8, 1953, and its several attachments, filed herein in support of plaintiff's motion for an extension of time beyond June 15, 1953; and I make this affidavit in support of a new motion or motions of plaintiff for an extension of time beyond July 15, 1953, for the production of Sturzenegger papers, and for other related purposes.

I reaffirm the fact of the appeal of June 4, 1953, to the Federal Council of the Confederation of Switzerland,

copies of which are annexed to the affidavit of John J. Wilson as Exhibits K and L, and that I am the same E. Wehrli-Bleuler who acted therein on behalf of plaintiff and the Sturzenegger Bank.

3242 On June 30, 1953, the said Federal Council handed down their decision denying the appeal of my clients. A photostatic copy of said appeal in its original, German text, and an English translation thereof, are annexed hereto, marked Exhibits A and B, and made a part hereof. There is no further administrative or executive review of this matter possible or allowable in Switzerland, and no judicial review thereof is permitted in Switzerland.

I reaffirm all the statements made by John J. Wilson on page 4 of his aforesaid affidavit; and that Exhibits I and J thereto are true copies of the letter which I dispatched on May 30, 1953, to one hundred and twenty-four (124) addressees. In response to said letters and to my further efforts, so far seventy (70) unqualified consents have been received, there are five (5) declinations; and twenty-four (24) have made responses which either contain conditional consents or involve questions, such as, for example, the power of the individual to give an adequate consent due to death of the individual primarily involved or liquidation or other disposition of the corporation primarily involved; and sixteen (16) of my letters have been returned by the Post Office because they could not be delivered to the addressees, and no responses have been received so far from the remaining nine (9) addressees.

I am making further efforts (a) to obtain consents from those who have declined, (b) to satisfy the conditions or other qualifications of the third group, (c) to obtain responses from those who have not answered, and (d) to locate, if possible, the addressees whose envelopes have been returned undelivered.

On June 23, 1953, I submitted to the Swiss Federal Attorney (hereinafter sometimes referred to as SFA) the clear consents which had been received up to that time, namely,

forty-nine (49), upon the basis of the statement contained in the SFA decision of June 25, 1951, and of the statement contained in the decision of May 28, 1953, of Dr. M. Feldmann, Head of the Federal Department of Justice and Police, with the request that the Swiss Federal Attorney permit the production of all those records of
3243 the Sturzenegger Bank falling within the orders of Chief Judge Laws for which I was then filing consents of all interested parties, as well as those covered by consents which I might be able in the future to obtain and file. Thereafter, twenty-one (21) additional clear consents were submitted to the Swiss Federal Attorney.

Immediately after the first of July, 1953, officials of the office of the SFA and other Swiss governmental officials began the task of examining the Sturzenegger papers, covered by the several clear waivers, in respect of the matter of their release from the confiscation order of the SFA of June 15, 1950, and several procedural steps were prescribed, such as the application of a numbering stamp to the documents and papers to be released, and the requirement that H. Sturzenegger & Co. must make a photostat of each such paper or document and retain such photostats at all times in its files. At the time of my departure from Switzerland on July 8, 1953, the SFA had cleared over 9,000 documents, subject, however, to their being photostated.

In the course of such examination, further questions have arisen, regarding consents involving further requirements of the SFA, which I am now pursuing. For example, even though the customer of the Bank has given his consent, if a third party is involved in the transaction or even mentioned in the document, his consent, too, must be obtained. If there is no executor of an estate, the consents of all the heirs are required. These are only examples of questions which the office of the Swiss Federal Attorney has so far raised.

I believe, based upon my inquiries and my best judgment, that the clear consents already obtained and sub-

mitted to the Office of the Swiss Federal Attorney relate to an overwhelming portion of the number of papers called for by Chief Judge Laws' order, and that, within a reasonable time—allowing for the tedious task of individual examination of papers and documents, their numbering, photostating and assembling, and the treatment, handling and disposition of secondary consents—tens of thousands of documents will be made available for inspection. Naturally, I cannot be

3244 exact in my estimate of what will be a reasonable time, but I feel that an extension to September 15, 1953, should be allowed. I do not mean to represent that the task will be completed by that time, or that all papers will be ready for production, but I feel confident that, by that date, a very large quantity will be made available and additional reports will be submitted concerning instances where the consents may not now be of a clear nature.

/s/. EDMUND WEHRLI-BLEULER.

[Sworn to July 11, 1953.]

3248 **Exhibit B.**

Translation

THE SWISS FEDERAL COUNCIL

in the appeal of the
Internationale Industrie- und Handelsbeteiligungen AG., Peter Merianstrasse 19, Basle, (abbreviated as Interhandel),
and the banking firm H. Sturzenegger & Co., St. Jakobstrasse 46, Basle,
v. the Federal Justice and Police Department,
relating to the lifting of an order of seizure,

In the name of Interhandel AG and of the banking firm Sturzenegger, both in Basle, Dr. E. Wehrli-Bleuler, law-

yer, Bahnhofplatz 14, Zürich, has lodged an appeal by petition of 4th June, 1953, with the Swiss Federal Council from the decision of the Federal Justice and Police Department of 28th May, 1953, with which the latter rejected an appeal filed by the complainants against the Office of the Swiss Federal Attorney.

The appellants petition the Federal Council as follows:

"The disputed decision of the Federal Department of Justice and Police of 28th May, 1953, should be quashed and consequently the appeal against the decision of the Office of the Swiss Federal Attorney of 14th April, 1953, should be approved, and consequently that:

Interhandel and the banking firm H. Sturzenegger & Co. should be permitted to comply fully with the court order of the U. S. District Court for the District of Columbia of 5th July, 1949, the opinion of Judge Laws of 19th February, 1953, and the order of Judge Laws of 31st March, 1953."

The Federal Council takes into consideration here that:

3249. a) from the formal point of view: The matter to be dealt with is an appeal within the meaning of Art. 124 of the Federal Law relating to the Organization of the Federal Administration of Justice. The appeal was lodged within the statutory time of 30 days.

b) from the material point of view: Interhandel is at present carrying on before the District Court of Columbia (USA) a suit for the release of its assets located in the USA and confiscated by the American government. In the course of this suit the court ordered on 5th July, 1949, that Interhandel submit to it all the records and business books of the banking firm H. Sturzenegger & Co. in Basle. On 15th June, 1950, however, the Office of the Swiss Federal Attorney seized these records of the said banking firm in order to prevent that Art. 47 of the Swiss Bank Law (bank secrecy) and Art. 273 of the Swiss Penal Code (economic espionage) be infringed by compliance with the order. An

application for reconsideration filed against this order of the Office of the Swiss Federal Attorney was refused as was an appeal to the same effect to the Federal Justice and Police Department.

Although on the basis of a very comprehensive report by a Special Master appointed by it the court came to the conclusion that Interhandel had acted in good faith and had done everything that could be expected of it in order to comply with the court order, and that the order of the Office of the Swiss Federal Attorney was not contrary to the Swiss laws, the American judge on 31st March, 1953, all the same set a term for the production of the Sturzenegger records with the threat that in case of non-compliance the suit would be summarily dismissed. This term expires on 15th July, 1953.

With reference to the severe threat of the dismissal of the suit, both Interhandel and also the banking firm Sturzenegger & Co. addressed a new application for reconsideration on 31st March, 1953, to the Office of the Swiss Federal Attorney with reference to its order of seizure. However, this application was also refused on the grounds that no new elements had been asserted which could modify the original decision. Proceeding from the same consideration

the Federal Justice

3250 and Police Department also dismissed the appeal against the Office of the Federal Attorney.

c) from the legal point of view: According to Art. 127 of the Federal Law relating to the Organization of the Federal Administration of Justice it can be asserted in an appeal to the Federal Council that a decision is based on a violation of Federal law or upon an incorrect or incomplete establishment of the facts of the case or that it is improper. The appeal of 4th June, 1953, does not assert that Federal law has been violated but asserts that the decision is based upon an incorrect or incomplete assessment of the facts of the case. However, there are no indications to show in what way and how far the facts had been incor-

rectly or incompletely assessed by the Federal Justice and Police Department. And in fact there are no such grounds for appeal: no further substantiation is required to show that a Swiss banking firm which would hand over to a third party all its business books and records or allow them to be inspected must or at the very least might infringe both Art. 47 of the Bank Law and also Art. 273 of the Penal Code. It was not only the right but also the duty of the Office of the Federal Attorney to prevent such violations of the law by its preventive order of seizure. The risk that Interhandel's suit could be dismissed by the American courts for non-compliance with an order cannot change anything here.

For these reasons it is

adjudged:

1. that the appeal lodged on 4th June, 1953, by Interhandel and the banking firm H. Sturzenegger & Co. both in Basle, against the Federal Justice and Police Department be dismissed.
2. that two copies be sent to Dr. E. Wehrli-Bleuler, lawyer, Bahnhofplatz 14, Zurich, attention the complainants, and to the Federal Justice and Police Department.

Berne, 30th June, 1953.

by order of the Federal Council:
the Federal Chancellor
sig. Ch. Oser

The appellants shall be charged Frs. 88.50 costs (sentence fee Frs. 75.- and chancellery fee Frs. 13.50).

3251 Filed October 16, 1953. Harry M. Hull, Clerk.

Motion to Vacate Paragraph 4 (As Amended) of the Order of March 31, 1953, and to Extend Time to Make Further Discovery Under the Order of July 5, 1949.

Comes now the plaintiff, by its undersigned attorneys, and moves the Court (Chief Judge Laws) to vacate paragraph 4 (as amended) of the order of March 31, 1953, and

to extend the time to make further discovery of the so-called "Sturzenegger papers" under the order of July 5, 1949.

The ground of this motion is that the plaintiff will be able to submit to the defendants on Monday, October 19, 1953 for inspection and copying 63,658 Greutert/Sturzenegger documents; that plaintiff expects to be able to submit further documents from time to time as they are released in Switzerland; and that because thereof the circumstances heretofore before the Court have been materially changed and there will be substantial compliance with the order of July 5, 1949.

This motion is supported by the attached affidavit of John J. Wilson and such further factual data as may be submitted to the Court at the hearing on Monday, October 19, 1953.

[Signed by counsel for plaintiff]

3252 To David Schwartz, Esq.
Attorney for Defendants:

The foregoing motion will be presented to Chief Judge Laws at the scheduled hearing on Monday, October 19, 1953.

[Signed by counsel for plaintiff]

I hereby certify that copies of the foregoing motion and notice, and of the annexed affidavit, were delivered to the office of David Schwartz, Esq., on October 15, 1953.

/s/ John J. Wilson.

3253 Filed October 16, 1953. Harry M. Hull, Clerk.

Affidavit of John J. Wilson in Support of Annexed Motion.

District of Columbia, ss:

I, John J. Wilson, one of the attorneys of record for the plaintiff, being duly sworn, state that on Wednesday after-

noon, October 14, 1953, there were delivered to my office from Switzerland 63,658 Greutert/Sturzenegger documents; that several days' time is required to arrange such papers in what I consider the appropriate manner for exhibition to the defendants, and in view of the coming week-end I have scheduled the exhibition to begin at nine o'clock a. m., Monday, October 19, 1953 at our office, and accordingly I have caused a letter to be delivered by hand on Thursday, October 15, 1953 to counsel for the defendants, which states as follows:

> "You may begin the inspection of Sturzenegger documents at our offices at nine o'clock, a. m., Monday, October 19, 1953."

I am advised that additional papers are expected to be forthcoming from time to time, as they are released in Switzerland.

/s/ John J. Wilson.

[Sworn to October 15, 1953.]

3254 Filed October 16, 1953. Harry M. Hull, Clerk.

Memorandum for the Court (Chief Judge Laws) With Respect to Plaintiff's Motion of October 15, 1953, Entitled "Motion to Vacate Paragraph 4 (As Amended) of the Order of March 31, 1953, and to Extend Time to Make Further Discovery Under the Order of July 5, 1949."

The affidavit attached to plaintiff's motion of October 15, 1953, quotes a letter of even date addressed to counsel for the defendants. To this letter from plaintiff, defendants made reply on the same date. For the information of the Court, a copy of the reply is attached. So that the correspondence may be read together, we attach as well a copy of plaintiff's letter.

Respectfully submitted,

[Signed by counsel by defendants.]

October 16, 1953.

3255

Copy

WHITEFORD, HART, CARMODY & WILSON
815 FIFTEENTH STREET, NORTHWEST
WASHINGTON 5, D. C.

October 15, 1953

David Schwartz, Esq.
Special Assistant to the Attorney General
Office of Alien Property
Department of Justice
101 Indiana Avenue, N. W.
Washington, D. C.

Re: *Chemie v. Brownell*

Dear Mr. Schwartz:

You may begin the inspection of Sturzenegger documents at our offices at nine o'clock a.m. Monday, October 19, 1953.

Sincerely yours,

/s/ JOHN J. WILSON.
JOHN J. WILSON.

JJWrs

3256

Copy

DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY
WASHINGTON 25, D. C.

DST:JDH:DS:AS
9-21-1335

October 15, 1953

John J. Wilson, Esq.
Whiteford, Hart, Carmody & Wilson
815 Fifteenth Street, N. W.
Washington 5, D. C.

Re: I. G. Chemie v. Brownell

Dear Mr. Wilson:

I have your letter of October 15, 1953, in which you state

that we may begin "the inspection of Sturzenegger documents" at your offices at 9 a. m., Monday, October 19, 1953.

Attached to your motion of July 14, now set for hearing Monday, October 19th, was a decision of the Swiss Government, dated June 30, 1953, denying your application that plaintiff and the Sturzenegger firm "should be permitted to comply fully with the Court order" of July 5, 1949, Chief Judge Laws' opinion of February 19, 1953, and the order thereon of March 31, 1953. The other day it was reported in the press that the management had, in the Annual Meeting of L. G. Chemie stockholders, made a statement which indicated that this decision of the Swiss Government was still in effect.

We take your letter, with its reference to "inspection of Sturzenegger papers," to be an offer to produce a part of the papers, similar to the offer you made in your motion of July 14. Our position is that selective and partial discovery is no discovery and that the Court's order of July 5, 1949 should be fully complied with or the complaint dismissed, pursuant to Chief Judge Laws' decision of February 19, 1953 and the orders entered thereon.

Your pending motion, therefore, presents the question of partial compliance for the Court's decision. The hearing on your motion is set for October 19th, at 10:30 a. m., before Chief Judge Laws. Unless, therefore, you assure us that the Swiss Government has now reversed its ruling of June 30, 1953, we will not appear at your offices on Monday, October 19, but will rather attend Court for the hearing on your motion, set for the same time.

Sincerely yours,

DAVID SCHWARTZ.

3257 Filed October 20, 1953. Harry M. Hull, Clerk.

Affidavit in Support of Plaintiff's Motion Filed October 16, 1953.

DISTRICT OF COLUMBIA, ss:

I, Peider Konz, being duly sworn, state that I am a Swiss Lawyer employed by the law firm of Whiteford, Hart, Carmody & Wilson, counsel for the plaintiff in the above-entitled civil action, and I give especial attention to the Interhandel case in association with John J. Wilson of that firm and am familiar with many of the details thereof; that I have read the motion of plaintiff filed herein October 16, 1953, as well as supporting affidavits of Edmund Wehrli and John J. Wilson, and I have supervised and assisted in the assembling and checking of the 63,658 Greutert/Sturzenegger documents now in the possession of our firm, preparatory to inspection by the Office of Alien Property.

I have made a check of said papers and find that they are addressed to, received from, or pertain to the affairs and transactions of (as the case may be), respectively, the following named persons, firms, corporations and other entities:

Osmon
Parta
N. V. Maatschappij voor Industrie & Handelsbelangen
D. A. Schmitz
Walter Duisberg
William von Rath
L. D. Pickering
Banque Federale
3258 Norsk Hydro
Deutsche Landerbank
I. G. Stickstoff
Chemische Fabrik Rohner
I. G. Chemie
Albert Gadow

Fritz Brumm
August Germann
Walter Germann
Dr. Hans Sturzenegger
Dr. Felix Iselin
Dr. Gottfried Keller
Carl Roesch
Axe Trading
Chemo Maatschappij
N. V. Expeditien Maatschappij Delta
Heydtkontor
Mapro
Fritze
Hollandsche Koopmansbank
Mithras
Tefiag
Sopadep
Rigidor
Perpetua
Industriebank
Visca
Providentia
Fiduziar
Dr. J. Auer
Karl Cassani
Joseph Rischof
Georges Du Bois
Grieshaber
Hans Haller
Sidler-Steiner
Reinhard Sütter
Basil Werder
Theodor Wolfensperger
Hans Schudel
Elbe Konsortium
Grutchemie Konsortium
I. G. Konsortium

V. R. Konsortium
Visca Konsortium
Teerfarben
Ahrens & Co.
I. G. Farben,
Ammoniak-Werk Merseburg
Carl Duisberg
Christiana Bank
Meinich Olsen
Norsk Creditbank
Bank fur elektrische Unternehmungen
Metallgesellschaft
Schweiz. Gesellschaft fur Metallwerte
Rotopulsor
A. Merton
Rudolf Euler

3259 So far, no account books have been made available. As the Court will realize, in the very nature of things, banking books of account contain the aggregate of the secrets of all who are involved therein and are not separable in the same sense as individual documents. Counsel have under consideration a plan, to be submitted to the Swiss authorities after it has been determined how many waivers and consents may be finally received, for the photostating of pages of books where the entire contents are not covered by waivers, with permission for the delivery of such photostates to the defendants subject to appropriate verification.

/s/ Peider Konz.

[Sworn to October 19, 1953.]

3260 Filed October 20, 1953. Harry M. Hull, Clerk.

Affidavit in Support of Plaintiff's Motion to Vacate Paragraph 4 (As Amended) of Chief Judge Laws' Order of March 31, 1953 and to Extend Time to Make Further Discovery Under the Order of July 5, 1949.

DISTRICT OF COLUMBIA, ss:

I, Edmund Wehrli-Bleuler, being first duly sworn, state as follows:

I am the same affiant whose affidavit was filed herein on July 14, 1953; and I make this affidavit in support of plaintiff's motion (which I have read) to vacate paragraph 4 (as amended) of Chief Judge Laws' order of March 31, 1953, and to extend the time to make further discovery under the order of July 5, 1949.

This affidavit supplements my aforesaid affidavit, and brings up to date developments with respect to the so-called "Sturzenegger papers."

Regarding the original 124 waivers and consents which I solicited, I wish to report the following: 91 consents have been received; but I am informed that 17 of them are not primarily involved in papers and documents in the Greutert/Sturzenegger Bank; there are 2 refusals; 2 have not responded and have not been traced; 3 maintain that there is no occasion for the giving of consents since they know of no transactions with the Greutert/Sturzenegger Bank; as to 3 I am assured by the Sturzenegger Bank that there are no papers pertaining to them—this is the reply of one of these, the letter to another came back undelivered and the third gave a conditional
3261 waiver; 4 are dead or if corporations, have been liquidated, and it has been impossible to locate legal successors or representatives; and as to the remaining 20, affiant continues to conduct correspondence or pursue "leads" in order to contact them or their legal representatives or successors, or in order otherwise to clarify the situation so that consents may be obtained or every reasonable effort exhausted.

3261

The 63,658 papers and documents referred to in the motion have been made available pursuant to waivers and consents. The procedures which were followed were the same as outlined in the first paragraph on page 3 of my previous affidavit. There are papers relating to this category which have so far not been released because the Swiss Federal Attorney has ruled that other persons mentioned or involved therein are likewise owners of a banking secret therein, and that such papers cannot be lawfully exhibited without their consents. There are also papers covered by waivers which will undoubtedly be released, but their examination by Swiss governmental officials has not been completed.

I believe that additional papers will be forthcoming and I can assure the Court that my efforts will be continued.

/s/ EDMUND WEHRLI-BLEULER.

[Sworn to October 17, 1953.]

3262 Filed November 16, 1953. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., *etc.*

Plaintiff,

v.

HERBERT BROWNELL, JR., *et al.*,

Defendants;

ERIC G. KAUFMAN, *et al.*,

Intervenor Plaintiffs,

ERNEST ATTENHOFER, *et al.*,

Intervenor Plaintiffs.

Memorandum.

Upon review of the proceedings in this case, and particularly developments since the last extension of time

granted plaintiff to produce documents and records called for originally by order dated July 5, 1949, the Court is of opinion there is no reasonable likelihood plaintiff will be able to accomplish the full production required by law. During a period of more than four years, plaintiff's efforts to make full production or accomplish full access to documents and records, such as was required by the Government of Switzerland in determining the same issues as are raised in this suit, have proved to be futile. Any less production or access will not comply with the requirement of Rule 34 of the Federal Rules of Civil Procedure which governs this Court. Accordingly, the Court is constrained to deny plaintiff's motion to vacate Paragraph 4 (as amended) of the order of March 31, 1953, and to extend time to make further discovery under the order of July 5, 1949, and will dismiss its suit with prejudice.

Counsel will prepare the appropriate order.

BOLITHA J. LAWS,
Chief Judge.

November 16, 1953.

3263 Filed November 19, 1953. Harry M. Hull, Clerk.

Objections to Defendants' Draft of Order of Dismissal, Request by Plaintiff for Findings of Fact and Motion for Dismissal of Defendants' Five Counterclaims.

On November 16, 1953, Chief Judge Laws filed a memorandum announcing that plaintiff's suit would be dismissed with prejudice and directing counsel to prepare an appropriate order.

Defendants' counsel have submitted a form of order. With the exception of the preamble of the submitted draft, and subject to the statements hereinafter made, the order is otherwise unobjectionable as to form. Specifically, plaintiff submits the following:

(1) The preamble is too general, does not provide adequate predicate for the order which follows it, and is not based upon nor does it refer to findings of fact which are required to be made.

(2) In paragraph numbered 5 of the proposed order, the words "and is hereby" should be inserted before the concluding word "entered."

(3) The Court should specify that the dismissal does not operate as an adjudication upon the merits. It may do this under Rule 41(b) of the Federal Rules of Civil Procedure; and should do so since there has been, in fact, no adjudication *on the merits*, but only *as sanction* for alleged non-compliance with an order of court. ("[The dismissal] is rather by way of denying the right of a plaintiff to proceed without obeying established

3264 court procedures". Opr. Feb. 19, 1953, p. 20) Plaintiff submits that the phrases "with prejudice" and "adjudication on the merits" are not synonymous. While both may preclude a refiling of the action, the use of the former is adequate for that purpose, but the implication of Rule 41(b), that a dismissal thereunder operates as an adjudication on the merits, should not be allowed to be raised here, since it would be factually inaccurate.

(4) The Court is obliged to make findings of fact before entering an order of dismissal. The last two sentences of Rule 52(a) of the Federal Rules of Civil Procedure read as follows:

> "If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

Defendants' motion for dismissal herein plainly was

* Defendants erroneously described their motion to dismiss as being made under Rule 37(b). Rule 37(b) only defines the powers of the court as to sanctions. Cf. the language of Rule 37(a) allowing the aggrieved party to "apply x x x for an order," and similar language in subparagraphs (c) and (d) of the same rule.

made under Rule 41(b), the first sentence thereof providing as follows:

> "For failure of the plaintiff x x x x to comply with x x x any order of court, a defendant may move for dismissal of an action x x x x."

Consequently, the motion comes within the exception stated in the last sentence of Rule 52(a), and hence findings of fact are required.

Neither the Court's opinion of February 19, 1953, nor its memorandum of November 16, 1953 contains findings of fact; therefore the provision of the penultimate sentence of Rule 52(a) does not supply the substitute for such findings of fact.

Findings of fact should be made by the Court in respect of the following:

(a) The facts relating to plaintiff's alleged control over the Sturzenegger papers. (On page 8 of the Opinion of February 19, 1953, it is
3265 stated that since the earlier finding of prima facie control, "other facts bearing upon the question have been introduced in the record". What are such facts?)

(b) The facts relating to plaintiff's alleged "actual possession" of the Sturzenegger papers. (See p. 21; Op. Feb. 19, 1953: "In this case we have noted that plaintiff with the Sturzenegger papers in his actual possession has 'refused' or 'declined' to exhibit them as ordered by the Court.")

(c) The facts regarding the importance or alleged indispensability of the Sturzenegger records, called by the Court "the nature and significance" of the papers. (See p. 12, Op. Feb. 19, 1953).

(d) The facts regarding the status and details of British law relied upon by the Court on pages 18-19 of the February 19, 1953 Opinion: In his Memorandum Opinion of February 23, 1951 upon another subject, Chief Judge Laws stated:

"This Court has understood that the laws, procedures and interpretations of laws of one nation are questions of fact in courts of a different nation."

(c) Facts that will sustain the implied conclusion that the 63,000 Sturzenegger documents produced by the plaintiff will not reveal all that the defendants require or seek. (See, e.g., pages 12-13 of the February 19, 1953 Opinion.)

(f) The facts upon which the Court reached the conclusion in its Memorandum of November 16, 1953 that "there is no reasonable likelihood plaintiff will be able to accomplish the full production required by law."

(5) Defendants' counterclaims (five in number) should be dismissed by the instant order, and plaintiff hereby so moves. It was possible to assert the counterclaims against the plaintiff in this proceeding only because the plaintiff submitted to the jurisdiction of the court by filing the original action here. But the defendants have elected to ask for a dismissal of plaintiff's action, not for failure to allege or prove a case, but as sanction for alleged non-compliance with an inspection order of the Court, and

3266 the Court has indicated that it will grant such motion. It would be inequitable and unfair for the Court to take such action and at the same time to hold plaintiff in the case as a target for defendants' counterclaims.

The dismissal of the counterclaims could be without prejudice; or instead of a dismissal at this time the Court could order them held in abeyance to await the outcome of plaintiff's appeal, at which time they could be reinstated if the Court's order should be reversed or dismissed if the order be affirmed.

(6) The present draft order is silent as to costs. The draft order submitted by the defendants on February 26, 1953, contained a section regarding costs. (See our letter to Judge Laws, dated March 6, 1953 commenting thereon.) Rule 54(b) of the Federal Rules of Civil Procedure pro-

vides that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs."

Plaintiff submits that the matter of costs should be specifically dealt with in the order. Last February defendants properly proposed that the Special Master's fees and expenses be excluded from the "costs" liability of the plaintiff, and plaintiff asked for the opportunity to discuss with the Court the nature and extent of the costs otherwise to be taxed. Plaintiff feels that the same program should be followed at this time.

Accordingly, the Court should make findings of fact, revise the defendants' draft order and dispose of defendants' counterclaims in the manner herein proposed.

Opportunity for a hearing hereon is requested.

[Signed by counsel for plaintiff].

3273 Filed December 21, 1953. Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., etc,

Plaintiff,

v.

HERBERT BROWNELL, JR., *et al.*,

Defendants,

ERIC G. KAUFMAN, *et al.*,

Intervenor Plaintiffs,

ERNEST ATTENHOFER, *et al.*,

Intervenor Plaintiffs,

ANNEMARIE RUTH KLINGLER, *et al.*,

Intervenor Plaintiffs.

Memorandum.

The Court is today signing the order in the form presented by counsel for defendant, as amended in paragraph

3 by agreement of counsel. After consideration of plaintiff's objections to defendant's draft of order, the Court has concluded it is obvious from its previous opinions that the final judgment of dismissal which it is today entering is based solely on plaintiff's failure to produce records as ordered by the Court on July 5, 1949. It therefore appears unnecessary to recite in the Court's order whether the dismissal is or is not granted on the merits or to make findings of fact.

Plaintiff has argued that its so-called "objections to defendant's order of dismissal" constitute a motion to dismiss defendant's counterclaims. Defendant has argued that said "objections" are not in the form of motion required by rules of Court and further that in the event said "objections" may be regarded as a motion, there is no necessity to deal with it at this time.

3274 The Court concurs in defendant's view that the so-called "objections" are not in proper form to be construed as a motion. It further finds that there is no necessity for a consideration of such a motion as of this time, otherwise, it would grant plaintiff opportunity to file such motion. When and if defendant seeks to try any of its counterclaims, plaintiff will be granted the right to file a formal motion to dismiss or to stay the proceedings.

/s/ Bolitha J. Laws,
Chief Judge.

December 21, 1953.

3275 Filed December 21, 1953 Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., etc.,

Plaintiff,

v.

HERBERT BROWNELL, JR., *et al.*,

Defendants,

ERIC G. KAUFMAN, *et al.*,

Intervenor Plaintiffs,

ERNEST ATTENHOFER, *et al.*,

Intervenor Plaintiffs,

ANNEMARIE RUTH KLINGLER, *et al.*,

Intervenor Plaintiffs.

Order.

Upon review of the proceedings in this case, and particularly developments since the last extension of time granted plaintiff, by order of June 19, 1953, to produce documents and records called for originally by order dated July 5, 1949, it is, by the Court, this 21st day of December, 1953

ORDERED:

1. That plaintiff's motion of July 14, 1953 to extend until September 15, 1953 the period defined in paragraph 4 of the order of March 31, 1953, as amended by order of June 19, 1953, be, and hereby is, granted;

2. That plaintiff's motion of October 15, 1953 to vacate paragraph 4 of the order of March 31, 1953, as amended by order of June 19, 1953, and to extend the time to make further discovery under the order of July 5, 1949, be, and hereby is, denied;

3. That defendants' motion of October 31, 1950 to dismiss plaintiff's complaint for the failure of the plaintiff to produce the papers of H. Sturzenegger & Cie., Basle Switzerland, as required by the order of July 5, 1949, be, and hereby is, granted, and plaintiff's complaint hereby

3276 is dismissed with prejudice, plaintiff and defendant to bear their own costs and expenses in the proceeding and in the reference, and the compensation and expenses of the Special Master not to be chargeable to plaintiff;

4. This order shall not apply to the claims of interveners Kaufman, Attenhofer and Klingler or to the claims of any other stockholders hereafter properly admitted as intervenors in this case.

5. The Court, expressly determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering final judgment dismissing plaintiff's complaint, hereby expressly directs that final judgment dismissing plaintiff's complaint with prejudice be entered.

/s/ Bolitha J. Laws,
Chief Judge.

3277 Filed January 8, 1954. Harry M. Hull, Clerk.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 4360-48

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., etc.,

Plaintiff,

vs.

HERBERT BROWNELL, JR., etc., *et al.*,

Defendants.

Notice of Appeal.

Notice is hereby given this 8th day of January, 1954, that the plaintiff, Societe Internationale Pour Participa-

tions Industrielles et Commerciales, S. A., etc., hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the judgment of this Court entered on the 21st day of December, 1953 in favor of the defendants against said plaintiff.

[Signed by counsel for plaintiff]

3279 Filed January 18, 1954. Harry M. Hull, Clerk

Statement of Points.

As required by Rule 75(d) of the Federal Rules of Civil Procedure, plaintiff herewith submits a statement of the points on which it intends to rely in its appeal from the order of the United States District Court for the District of Columbia dismissing its complaint with prejudice.

(1) The Court below erred in ordering, pursuant to Rule 34, F. R. C. P., that plaintiff produce for inspection and discovery by defendants the records of the bank, H. Sturzenegger & Cie.

(2) The records to be produced were not designated with sufficient particularity.

(3) Defendants failed to make a sufficient showing of good cause for the production of the Sturzenegger records.

(4) Defendants failed to make a sufficient showing of good cause for the production of that portion of the Sturzenegger records—if any—which plaintiff might not be able to obtain through waivers of secrecy rights by individual customers of the bank.

(5) The Court erred in holding that the Sturzenegger records were indispensable for a fair trial of the instant case.

(6) The Court erred in holding that the Sturzenegger records were in plaintiff's possession.

(7) The Court erred in holding that plaintiff had access to and could inspect the Sturzenegger records for its own purposes.

(8) The Court erred in holding that the Sturzenegge records were in plaintiff's control.

3280 (9) The Court erred in holding that plaintiff ha control over the Sturzenegger Bank at the time o the signing of the discovery order or at any time before o after that date.

(10) The Court erred in holding that, but for their con fiscation by the Swiss Federal Attorney, the Sturzenegge records were under plaintiff's control.

(11) The Court erred in holding in its order of Marc 31, 1953 that plaintiff had continuously failed for more tha two years to comply with the Court's discovery order; an that as a matter of law, plaintiff was in default and it case was subject to dismissal with prejudice.

(12) The Court erred in overruling plaintiff's motio that the defendants be ordered to cooperate with plaintif in requesting waivers of secrecy rights from the Swiss Government and from the individual customers of the Sturzenegger bank.

(13) The Court erred in relieving defendants from the task of examining approximately 63,000 Sturzenegger documents already obtained by plaintiff through waiver of secrecy rights by individual customers of the bank.

(14) The Court erred in concluding that the 63,000 Sturzenegger documents produced by the plaintiff would not reveal all that the defendants required or sought.

(15) The Court erred in overruling plaintiff's motion of October 16, 1953 to vacate paragraph 4 of the Court's order of March 31, 1953.

(16) The Court erred in refusing to grant further extension of time for the plaintiff to continue its efforts to produce the Sturzenegger records.

(17) The Court erred in concluding that there was no reasonable likelihood that plaintiff would be able to accomplish the full production.

(18) The Court below erred in dismissing plaintiff's complaint pursuant to Rule 37 F. R. C. P. or 41(b) or to

any other rule, on the ground of plaintiff's involuntary inability to produce the Sturzenegger records.

3281 (19) The District Court's order dismissing plaintiff's complaint with prejudice amounts to a denial of due process and is violative of the Federal Constitution.

(20) The Court misconstrued British and Prize law and accepted evidence thereof which was improperly presented.

(21) The Court below erred in declining to prepare findings of fact in support of its order of dismissal.

(22) The Court erred in not granting plaintiff's motions of February 5, 1950, June 22, 1950 and November 28, 1950 to be relieved from the obligation to produce the Sturzenegger papers.

The defendants are hereby notified that it is the purpose of the plaintiff by the foregoing and by this appeal to claim as error on the part of Chief Judge Laws each and every action, decision and order adverse to the plaintiff which he took, made or entered, or failed to take, make or enter, in respect of or touching upon his determination that the plaintiff was required to produce the Sturzenegger records.

Respectfully submitted,

[Signed by counsel for plaintiff]

3495 Filed March 1, 1954. Harry M. Hull, Clerk.
Submitted to Chief Judge Laws, February 6, 1953.

Plaintiff's Memorandum Entitled: "Even Before the Seizure Order of the Swiss Federal Attorney the Sturzenegger Records Were Not in Plaintiff's Possession, Custody or Control, As Required by Rule 34, F. R. C. P."

3504 Under the titles "Until 1936 Chemie was a desk-drawer corporation of Sturzenegger and although Chemie then acquired its own premises adjoining Sturzenegger, the intimate relationship in the conduct of their

3504

business remained unchanged," and "Both Chemie a
Sturzenegger owe their existence to Farben money a
their joint relationship with Farben continued into t
war years," defendants dump on the table an assortme
of selected information,

3505 which, besides being distorted, misstated and pull
out of context, has no bearing whatsoever on t
question of control over the Sturzenegger documen
which is now before this court. Defendants apparentl
have lost sight of the fact that, even if their narrative wer
true, events which happened in the last war years or pri
to 1936 are utterly irrelevant, as the question to be inquire
into at this point is the relationship between plaintiff an
the Sturzenegger firm for the purposes of discovery an
at the time of this Court's order of discovery, or at be
since the filing of the present suit. Equally, the fact tha
the two firms had joint connections with I. G. Farben, tha
Sturzenegger represented this plaintiff in certain busines
deals, or that the two firms had common participations, tha
at one time their offices were on the same premises and tha
they had certain employees in common, is utterly inconclu
sive, even if defendants' allegations were relevant in poin
of time. These allegations if supported might conceivably
have some bearing on the main issue of this suit. But these
proceedings, based on pre-trial discovery requirements, are
not a preview of defendants' argument on the merits.

Respectfully submitted,

[Signed by counsel for plaintiff]

3506 Filed March 3, 1954. Harry M. Hull, Clerk.

Submitted to the Special Master, January 28, 1953.

Letter, Plaintiffs Counsel to Special Master.

January 28, 1953.

William J. Hughes, Jr., Esq.,
821 - 15th Street, N. W.,
Washington, D. C.

In re: *Chemie v. McGranery*

Dear Colonel Hughes:

I am sending you herewith the original of our revised list of documents withheld on the ground of privilege. Mr. Schwartz has been handed two copies of this list pursuant to our agreement at the hearing of January 26, 1953.

We also wish to confirm that we are ready to submit the privileged documents to you at your convenience.

Sincerely yours,

PEIDER KONZ.

PK/gb
cc: David Schwartz, Esq.

3594 Filed June 10, 1952. Harry M. Hull, Clerk.

Proceedings Before Special Master, March 7, 1951.

3623 By Mr. SCHWARTZ: . . . Did they go to Sturzenegger and say, "Now, you took oath to waive the privilege for yourself as a client of your own bank because you are a director of this firm of Chemie and you have a duty to help us comply with the order of the judge. You waive the privilege as to your affairs, and let's get these corporations that we own, these wholly-owned corporations, Perpetua, Rigidor, and those corporations, and let's have them waive the privilege for their affairs, so we will come to the American judge at least with something; we will show our good faith."

3715 Filed June 10, 1952. Harry M. Hull, Clerk.

Exhibit to Prodeedings Before Special Master, April 11, 1951.

Translation.

Dr. E. Wehrli-Bleuler
Dr. Felix Wiget
Dr. Mark Hauser
Rechtsanwalte

Zurich, 2nd April 1951

Herrn
Bundesanwalt Prof. Dr. W. Luthi
Bundeshaus
B e r ne

Dear Sir,

In the name and as lawyer of the
Internationale Industrie- und Handelsbeteiligungen A. G.
Peter Merianstr. 19, Basle, ("Interhandel"),
I refer to your order of 15th June, 1950, with which you ordered the confiscation of the business records and books of the banking firm H. Sturzenegger & Co., in Basle, the production of which had been ordered by the American judge, and prohibited the delivering up of such records or copies and the granting of inspection to third parties, and herewith make

APPLICATION

1. that the order be countermanded and the banking firm H. Sturzenegger & Co. be permitted to produce its records in the suit of the applicant against J. Howard McGrath, Attorney General of the United States, as successor to the Alien Property Custodian, before the United States District Court for the District of Columbia;
2. that alternatively, the said order should be modified in

3717 the sense that the banking firm H. Sturzenegger & Co. be permitted to produce before the United

States District Court for the District of Columbia in the suit of the applicant against J. Howard McGrath, Attorney General of the United States, as successor to the Alien Property Custodian, those records the production of which involves neither a violation of Art. 273 St. G. B. (prohibited economic espionage) nor of Art. 47 of the Bank Law (bank secrecy).

In support of this I take the liberty of stating the following:

I.

The United States District Court for the District of Columbia had ordered, with order of 5th July, 1949, in the suit of the Internationale Industrie- und Handelsbeteiligungen A. G., Basle, as plaintiff, hereinafter abbreviated as "Interhandel", against J. Howard McGrath, Attorney General of the United States, as successor to the Alien Property Custodian, as defendant, hereinafter abbreviated as "Attorney General", inter alia the production of all records of the banking firm H. Sturzenegger & Co., Basle. Previously the Swiss government had informed the Attorney General of the United States through the Swiss Legation in Washington, that it was prepared exceptionally to admit depositions and inspection of records in this suit in Switzerland itself upon certain conditions, with which it granted permission

3718 to act for a foreign country in the sense of St. G. B. Art. 271.

Already on the occasion of the deposition of Dr. Hans Sturzenegger in Washington in his capacity as member of the board of directors of Interhandel, the production of the records of the banking firm H. Sturzenegger & Co. was demanded of him although he had already referred to the fact that this would bring him into conflict with Art. 273 St. G. B. (prohibited economic espionage) and Art. 47 of the Bank Law (bank secrecy). When on 4th May, 1950, he applied to the Swiss Federal Attorney, Prof. Dr. W. Luthi, and requested a dispensation from these stipula-

tions, the Swiss Federal Attorney set forth the impossibility of according such a demand with reference to the legal position. In June 1950 the representatives of the Attorney General were preparing to come to Switzerland to inspect the records. On 15th June, 1950, the Office of the Swiss Federal Attorney ordered the confiscation of the records of the banking firm H. Sturzenegger & Co., considering that the delivering up of these records would necessarily fulfill the constituent facts of prohibited economic espionage (Art. 273 St. G. B.) and also the bank secrecy (Art. 47 of the Bank Law), which offence the Federal Authorities have to prevent for the purpose of maintaining the public security and order on the basis of the preventive police power vested in them. Therefore the inspection of records by the representatives of the Attorney General who had travelled to Switzerland was limited to Interhandel's

3719 records.

With motion of 31st of October, 1950, the representatives of the Attorney General applied to the United States District Court for the District of Columbia that Interhandel's suit be dismissed because the records of the banking firm H. Sturzenegger had not been produced. ("dismissing the complaint because of the failure of the plaintiff to procure the papers of H. Sturzenegger & Co., Basle, Switzerland, in compliance with the order of the court dated July 5 1949"). As apart from this the Swiss government and the Office of the Swiss Federal Attorney were also violently attacked in this motion, the Swiss government had a note handed by the Swiss Legation in Washington to the American government on 10th January 1951, and in this presented an explicit protest against the form and the contents of the motion of 31st October, 1950, and set down the lawfulness of the procedure of the Swiss government and of the Office of the Swiss Federal Attorney for the enlightenment both of the American government and of the competent American court.

In spite of this the United States District Court for the District of Columbia, with its order to hear evidence of 15th February, 1951, and order of 1st March, 1951, authorized the government referee (Special Master) to take evidence whether Interhandel had endeavoured in good faith to fulfill the court order to produce the records of the banking firm H. Sturzenegger & Co. ("The Special Master will be ordered to take evidence as
3720 to the good faith of plaintiff in its efforts to comply with the order of the Court to produce the Sturzenegger papers"). In connection therewith, the special master stated on 9th March, 1951, that the onus of proof falls upon Interhandel as the latter had applied to be released from the burden of producing the Sturzenegger documents.

II.

I request you not to construe the present application for reconsideration and absolute countermanding of the confiscation as uncalled for criticism of a measure of the Office of the Swiss Federal Attorney covered by the note of the Swiss government. It derives from the recognition of the difficulties for the American judge in understanding the Swiss legal position and from the desire not to leave anything untried to comply with the order of the American judge.

III.

If it should not be possible to accord the main application, I request you at least to grant the alternative application. It is the consequence of a statement of the representative of the Attorney General before the special master on 7th March, 1951, in Washington, which says there:

"Did they (Interhandel) go to Sturzenegger and say, 'Now, you took oath to waive the privilege for yourself as a client of your own bank because you are a director of this firm Chemie (Interhandel) and you have a duty to help us comply with the

3721 order of the judge. You waive the privilege as to your affairs, and let's get these corporations that we own, these wholly-owned corporations, Perpetua, Rigidor, and these corporations and let's have them waive the privilege for their affairs, so we will come to the American judge at least with something; we will show our good faith." (Page 30 of the transcript of the proceedings of 7th March, 1951).

Although the statements proceed in part from incorrect assumptions they still show that the opposing party expects Interhandel to endeavor to be able to produce at least a part of the Sturzenegger records. In this sense too the applicant would not like to leave anything untried and is therefore endeavoring with the present application to obtain contingently only a partial release. It appears that it ought to be possible, after a thorough and careful examination of the records, to separate those, the production of which fulfills the formulated conditions, namely non-violation of bank secrecy and non-violations of the secrets protected by the prohibition of economic espionage. In these circumstances there would probably be nothing against a modification of the ban to the extent requested.

Yours truly,

By registered mail.

* * *

4680 Filed June 10, 1952. Harry M. Hull, Clerk.

Testimony of Walter Germann Before Special Master.

* * *

4684 WALTER GERMANN was called as a witness on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q. For the record, Mr. Germann, are you addressed as "Dr." Germann or as "Mr." Germann? A. Mr. Germann.

Q. Your name, sir, is what? A. Walter Germann.

Q. And where do you reside?

4685 A. I reside in Basel, Switzerland.

Q. And what is your approximate age? A. I am 42 years old.

Q. Are you a native Swiss citizen? A. Yes, sir.

Q. Where were you born? A. In Basel, Switzerland.

Q. What is your present official connection with the plaintiff in this action? A. I am the managing director of Interhandel.

Q. Is there embraced within that term the fact that you are a member of the board? A. Yes, sir.

Q. As well as the general manager? A. Yes, sir.

Q. Since when have you been the general manager? A. I have been appointed general manager in March 1945.

Q. And since when have you been a member of the board? A. Since November 1948.

Q. And have you functioned in those respective capacities since the respective dates stated? A. Yes, sir.

Q. Did your title change after you became a member of the board? A. Not in the colloquial language, no.

4686 Q. Mr. Germann, what has been your education?

A. I attended public school and high school in Zurich, Switzerland. I then passed on to two years banking apprenticeship. Then I started studying law, first at the University of Zurich and then at the University of Geneva, where I passed the examination of licencie en droit, licensed at law, which is somewhat equivalent to your bachelor of law.

Q. You say that you were granted a degree equivalent to our bachelor of law? A. Yes, sir.

Q. Go ahead, sir. Have you other degrees? A. No, but my work was not—my education was not terminated at that point.

Q. Thank you. Go ahead, please. A. I then went back to my business education and I got additional training first in Paris with a brokerage firm and then with the

banking firm of Morgan and Company, and after that I went to New York where I worked for about a year with the banking firm A. Iselin and Company.

Q. Pardon me if I interrupt you. Approximately what year was that, Mr. Germann? A. That was in 1934 and 1935.

Q. That is the same name as the president of your board.

A. Yes.

4687 Q. Is the president of your board connected with that firm? A. They are far relatives, distant relatives.

Q. Now, please go ahead. A. After that I made two short stays in Germany, first about three months with Metallgesellschaft, and again about three months with an affiliated company of Metallgesellschaft in Hamburg named Nord Deutsche Affinerie. After that, and this was in summer of 1936, I went back to Switzerland, and I entered the firm of Eduard Greutert and Company in Basel as an employee.

Q. You remained with that firm until? A. Until early 1945.

Q. Were there substantial interruptions in your actual day-to-day connection with that firm, Mr. Germann? A. Not before the war, but during the war I joined the army and I did considerable active service.

Q. That is the Swiss army? A. Yes.

Q. Was your active service within the territory of Switzerland itself? A. Yes, sir.

Q. But it took you away from day-to-day business? A. Very much so.

Q. You were in uniform and on duty? Is that correct,

4688 sir? A. Yes.

Q. What relation was Mr. Eduard Greutert to you, Mr. Germann? A. He was my uncle, a brother of my mother.

Q. And we have heard mention from time to time of

Mr. August Germann who is a member of the board of Interhandel. What relationship are you to him? A. He is my father.

Q. When was your first connection, official connection, with Interhandel? A. In early 1945.

Q. Is that upon the occasion of your becoming general manager? A. Yes, sir.

Q. You had no prior employment by Interhandel? A. No, sir.

Q. And did that follow practically immediately upon your cessation of employment by the Sturzenegger firm? A. Yes, sir.

Q. What was your status in the Sturzenegger firm at the time of your severance of connection there? A. I was a first clerk authorized to sign together with another first clerk.

Q. Now, Mr. Germann, are you generally familiar with

4689 the court proceedings in the United States in the instant action? A. Yes, sir.

4711 Q. Now, in order that the Master may follow the mechanics of these two letters, would you be kind enough to refer to Exhibit 4 and point out to the Master any time limitations which are prescribed in Article 14 of the partnership agreement? A. The right to cancel, to redeem the capital stake of the sleeping partner is unlimited and it can be done at any time.

Q. By whom? A. By the two other partners. Notice must be given of one month.

Q. Of the intention to pay off? A. Yes.

Q. All right, sir. A. Payment must be made within three months after notice.

Q. Now, is there any provision in that Article 14 or any other agreement which requires acquiescence or collaboration by Interhandel in this move? A. No, sir.

4712 A. We had no part in the resolution taken by the two other partners.

Q. Were you apprised in advance of the receipt of the letter of May 27, 1949 that such action would be taken? A. I recall that Dr. Sturzenegger told me before that time that he and Mr. Wolfensperger, who was the head of Industriebank, were considering such a step.

4752 Q. Did you receive information from Mr. Schwartz or from your own people as to how many microfilms were taken or how many different photographs were taken of Interhandel and Osmon documents? A. I learned that only after the inspection was concluded, and I think you were the source of a figure of 70,000 shots.

Q. What was your information as to whether Mr. Schwartz's staff was photographing all of the documents which were being displayed to him? A. I knew that from the first day on, because in the first discussion there was some problem about the technicality. I had asked Mr. Schwartz to be kind enough to tell us which documents he would photograph or that he would let somebody of our staff assist him in the microfilming and take note of the documents which would be photographed. He then told me that he would prefer to tell me that he would microfilm every paper we would show him.

Q. Mr. Germann, the order of Judge Laws called for the exposure of a list of some quantity of documents which the Swiss Compensation Office had earlier removed from the

4753 files of Interhandel. Can you state whether you were able to supply such a list? A. I was not able.

Q. Will you state why you were unable to supply such a list? A. Because we had been requested by the Swiss Compensation Office to turn this list back to them because it was some kind of a receipt for the documents they had taken away from us.

Q. You had no duplicate of it? A. No, sir.

Q. Had you retained the list while the SCO had the documents described on the list? A. Yes, sir.

Q. Mr. Germann, do you recall whether these 2,000 or so documents that are referred to on the list—I don't know the quantity—whether they had come out of one or more files of Interhandel or whether they comprised documents which had come out of many files of Interhandel? A. They comprised documents of practically the whole set of files.

Q. And when the documents were returned by the SCO, what was done with them? A. They were filed back in their old jackets.

4768 CROSS-EXAMINATION

BY MR. SCHWARTZ:

4823 Q. This letter of May 27th, Exhibit 10 and 10(a), 1949, is the one I am calling your attention to particularly.

Q. No, I won't ask you about the text of it, just the fact of the letter. You testified, I think, that the letter came as a surprise to you. You had no notice of it in advance? A. The letter came in as a surprise. I had heard from Dr. Sturzenegger in advance that he and Mr. Wolfensperger had such plans.

Q. Oh. I'm sorry. That's right. You said that. You're perfectly right. Do you remember hearing as to why they were planning to do that? Did they say why?

4824 A. One reason I remember, they said they wanted to conclude a trend they had been following for several years in the past, namely, to reduce this sleeping partnership of Interhandel. It was the conclusion of a development which had started already during the war.

Q. Did they mention or did you mention in discussions

about the letter before it was written that it might have some effect on the proceedings then pending before Judge Laws? A. No, sir.

Q. I want to remind you that this is May 1949; that the last argument before Judge Laws as Mr. Wilson mentioned this morning was in April 1949, and that there was silence then. The judge was considering the matter of whether we should have the Chemie papers and the Sturzenegger papers and who should have them first. You remember that that is the period of time? A. Yes, sir.

Q. And I am right, am I not, that that was a very important matter for I. G. Chemie and for Sturzenegger & Cie., the matter of discovery of papers then pending? A. Yes, and we were confident that Judge Laws would see our cause.

Q. But it was a very important matter? A. Very important.

Q. And so when they told you about this letter you
4825 did not mention that it might have an effect on the proceedings or the inspection of papers nor did they? A. No. It did not occur to me.

Q. Didn't occur to you at all? A. No.

Q. Never entered your mind? A. Not at that point.

Q. Did it enter your mind ever that it might—ever until I suggested it to you now? A. Well, I realized the fact when we came to the real impact of the order and of the subsequent developments of this problem.

Q. Do I take it then you mean that after the order was made and you were ordered to produce the Sturzenegger papers then you realized that this problem expressed in the letter might have an influence on the inspection of papers? A. Yes, I think I realized from then on that this might have some bearing.

Q. What bearing did you think it might have? A. Well, I saw that we did not have any longer any influence on the Sturzenegger firm.

Q. It occurred to you that the letter, together with the

August letter, certainly lessened your influence or ended your influence?

4826 A. Ended our influence.

Q. Did you inform Mr. Wilson of this May letter at the time it was received? A. I do not remember. I'm afraid not.

Q. Do you remember any discussions with Mr. Wilson about that May and August letter, about the time they were received? A. I think the problem came up after the order was signed.

Q. Then you called them to his attention or you told him of these letters? A. Yes. This must have happened at that time.

Q. Now, Mr. Wilson was then in court in the spring of 1949 arguing very strenuously that I. G. Chemie had no control over Mr. Sturzenegger. Right? A. Yes.

Q. And you mean to say that when you received that letter of May you did not communicate it to Mr. Wilson immediately or soon thereafter? A. I'm not sure, but I'm afraid we did not immediately.

Q. And you didn't realize that it had some effect on the proceeding or it might have some effect and deliberately failed to communicate it to Mr. Wilson? A. I did not see that point I'm afraid, and I think we drew his attention to the fact only later on.

* * *

4843 Q. All right. Did you mention to him, and did you mention to the Swiss Government—Let me ask you a preliminary question or two. Do you remember the administrative claim you filed with the Office of Alien Property to have a return of this stock? You signed it—you with one of the two people. A. Yes.

Q. Do you remember it attached many documents? A. Yes.

Q. Do you remember that many of those documents came from the Sturzenegger files? A. Yes.

Q. Did you remind Mr. Sturzenegger that he had ex-

posed documents from his files for your benefit, plaintiff's benefit, to help you get this stock back, and so he was being asked to do the very same thing now and he ought to do it? A. I did not draw his attention to this fact, and the question which arose in 1950 was an entirely different one, and I told you already that we just didn't deem it decent to offer the Court just the reproduction of our own files with the Sturzenegger firm because you had them already
4844 in our own papers.

Q. You do not understand me. In that claim, Mr. Germann, which you signed, you attached a great number of papers, some 11 or 12 supplements, each one having a part. There may have been as many as 40 papers. At least ten of those documents, Mr. Germann—now, I'm going to show them to you immediately—could only have come from the Greutert files. They came from the Greutert files. They were not letters with banks but with other companies. And Mr. Sturzenegger gave them to you so that you could attach them to your claim and get this property back. That is my conclusion. A. Yes.

Q. You don't have to agree. Did you remind Mr. Sturzenegger that he had done that and that he should now again expose his records, more records, but still expose his records, because you needed them in your lawsuit? A. Not with this argumentation, because the papers you mentioned did not constitute protectable secrets.

Q. How do you know that? Do you have those papers so freshly in your mind? A. I think so, yes.

Q. Tell me what they are, just to test you. A. They are purchase slips for the bulk of them, between Sturzenegger or Greutert and ourselves.

4845 Q. No, sir. They are papers between yourselves and also with Voorindu, Chemo, Industriebank, Mithras and American I. G. That's five companies. A. I come to that.

Q. I'm sorry. A. You stop, you interrupt me, Mr. Schwartz.

Q. I'm very sorry.

THE MASTER: Well, Mr. Germann, the fact of the matter is you never thought of the matter at all at the time, did you?

THE WITNESS: No.

THE MASTER: Well, then, that settles it.

4846

Q. Mr. Germann, I would like to show the administrative claim to you, filed by I. G. Chemie, signed by you and Dr. Iselin.

For the record I would like to note that it was Sturzenegger Deposition Defendants' Exhibit No. 662-24999.

Will you just look at the original of the application and note your signature. Do you recognize it and remember it? A. Yes.

Q. And attached to that, am I right, is a list and a table of contents of the various supplements? There are some eleven or twelve supplements, some of them A's and B's, and each one has parts, so roughly speaking there might be as many as thirty or forty documents attached. Am I right? A. Yes.

Q. All right. Now, I give you the original, Mr. Germann, and call to your attention the particular supplements. They are all numbered on top. Will you pull Supplement 6A, Annex 1.

4847 A. Yes.

Q. Looking at the table of contents and the annex, or searching your memory, can you tell us what that is? For the record, the table of contents describes it as "Photographic copy from securities accounts of Grutchemie-Konsortium." Can you tell us what it is, actually, after you have refreshed your memory by reading that? A. I deduct that that is so.

Q. Well, I assume it would be so, but what is the securities accounts of Chemie and who owns the books and where

is the book? A. The book is in the premises of Sturzenegger, and the book is owned by Grutchemie-Konsortium.

Q. Not Mr. Sturzenegger's book? A. No.

Q. Is not Grutchemie Konsortium a client of his or was it not a client of his, and is this not an excerpt in which he records the financial affairs of his client, Grutchemie Konsortium? A. If that reads it is.

Q. You have the table of contents: Please look at it—6A. A. Yes. It reads that it is a copy from the securities account of Grutchemie Konsortium. Therefore, it is out of a book of Grutchemie Konsortium, and it is

4848 owned by—the book is owned by Grutchemie Konsortium.

Q. Do you think that this is the book in which Mr. Sturzenegger records financial transactions of his client, Grutchemie, aside from who owns it? Is this functionally the book that Mr. Sturzenegger as a banker uses to record financial matters about his client, Grutchemie? A. No, I don't think so.

Q. You think that is a book owned by Grutchemie Konsortium? A. It says so, and I am fairly sure that it is so.

Q. Is it your theory that a banker who uses a book to reflect the debits and credits to his client doesn't own the book but his client does? A. There are two sides to it. The banker has a book and the client may have a book.

Q. Or may not, if he is careless? A. Or may not if he doesn't keep his book.

Q. You are sure this is not the book that the banker has, that this is the client's book? A. The banker keeps the book, but it is—the ownership—this is the actual property of Grutchemie Konsortium.

Q. You mean the secret contained in it or the book itself? I don't mean the right to reveal this information. I mean this book is not a book of the banking house of Sturzenegger?

4849 A. No, sir.

Q. You mean that the books that Mr. Sturzenegger has on his premises, one book entitled "Grutchemie" and

another one entitled "I. G. Chemie" and another book entitled—I don't care, "United States Steel"—that the client owns the book but Mr. Sturzenegger does not? A. No, this is not the situation.

Q. I see. This is the client's book? It is merely a coincidence that it is located there? A. Yes.

Q. In other words, Grutchemie Konsortium leaves its books with Mr. Sturzenegger? A. Yes.

Q. Now, that is because, am I right, Grutchemie is owned by or was when it existed—it was a trading account. It was just a name—Sturzenegger and Chemie? A. It is not a trading account.

Q. Whatever it is. It is a secretariat or konsortium: A. No.

Q. It is not a corporation, a partnership with a contract? A. If I am right, it is what we called a simple company.

Q. All right. Who owned it during its life? A. Chemie Interhandel on one side and Sturzenegger on the other.

4851 Q. Why then, Mr. Germann, were not the books of the Grutchemie Konsortium introduced when I. G. Chemie exhibited its papers? A. It was not asked for.

Q. You mean it was not within the order? A. The order did not call for it.

Q. Do you not have control over this book together with Mr. Sturzenegger? A. That might be a question, but the order does not call for the books of Grutchemie Konsortium.

Q. It calls for every paper on Chemie's premises and every paper on Sturzenegger's premises. You have just told us that these books are on Sturzenegger's premises.

Mr. Wilson: I don't think that is the order at all, Mr. Schwartz.

By Mr. Schwartz:

Q. All right, we won't quarrel about the order, Mr. Germann. It won't help us right now. Certainly the books

of Grutchemie Konsortium were not introduced: right? A. Yes.

Q. Were not inspected? A. Yes.

Q. You say it is clear that those books are owned by Grutchemie Konsortium in the first instance? A. And alone.

4851 Q. And alone. And that Sturzenegger and Chemie were the only people who had any interest in Grutchemie? A. Yes.

Q. And it is also true, is it not, that these papers, the photostats, came from something on the Sturzenegger premises? A. Yes.

Q. And what is attached? A. Yes.

Q. Will you pull Supplement 7C, Annexes 1, 3, and 5. For the record, Your Honor, Annex 1 would be a document and Annex 2 is a translation. So when I say "Annexes 1, 3, and 5," that means the three documents described as Annexes 1 to 6.

Please refer to the table of contents at any time you like. The first is a letter from Grutchemie, the second is a letter from Chemo to Greutert, and the third is a letter from Greutert to Chemo, and they are dated in '38 and '39. Is that right? A. Yes.

Q. Taking the first one, will you look at it please. That's marked "Duplicate," am I right? It is obviously a carbon copy of the original letter? A. Yes.

Q. What? A. Yes.

4852 Q. Now, do you know or do you remember that this was photographed from a document in the possession of the Sturzenegger firm? A. Yes.

Q. Chemo is not a bank, is it? A. No.

Q. Grutchemie Konsortium is not a bank? A. No.

Q. The second one, Annex 3, am I right, is obviously a photograph of an original letter from Chemo to Greutert? A. Yes.

Q. Dated '39. Do you know whether that was photographed from an original document in the possession of the Sturzenegger firm? A. Yes.

Q. The third, am I not right, is again a photograph of a carbon copy—Annex 5? A. Yes.

Q. And it, too, came and could only have come from the Greutert firm, right? A. Yes.

Q. Will you turn to Supplement 7D, Annex 1. Do you see that? A. Yes, sir.

Q. That is described as "Photographic copy of dollar

4853 account of Chemo with Ed. Greutert & Cie. for the year 1929."

Am I right that this then is different from the one by Chemie? This is clearly a photograph of a page in a book of the Sturzenegger bank? A. Yes.

Q. Right. And it contains the information as to financial transactions with Chemo, a client, right? A. A wholly owned subsidiary.

Q. Whose books and papers and information respecting whom were not produced by Mr. Sturzenegger? A. They were not available, yes.

Q. You mean they have been burnt up since this picture was taken? A. You mean this account?

Q. Yes. A. I misunderstood you. I thought the books of the corporation. They are in Holland and not available to Sturzenegger.

Q. But no information about Chemo was produced by Sturzenegger in this inspection? A. No.

Q. Going back to 6A, Annex 1, how do you really deduce, or is it purely from memory, that this is the book that Grutchemie keeps? A. Well, I got suspicious first because I was looking

4854 at the handwriting, which was not the one of the bookkeeper of the Grutchemie Konsortium firm, and then I read from this list of annexes that this is a copy of the securities account of Grutchemie Konsortium, and I am sure I was very careful when I filed these documents that I checked this. And this is the only way to refresh my memory. I couldn't recognize it on first sight.

Q. But from these factors you deduce this— A. Yes.

Q. —is Grutchemie's book? You say you were very careful when you filed this thing. Did you look at the book itself before you ordered the photograph to be made and have it attached? A. I don't think so.

Q. How did you come to get that photograph? A. I conferred with Dr. Sturzenegger and his chief assistant in these fields, Mr. Werder, and asked them to fill in the gaps in the chain of proof of ownership as to Grutchemie and to other—

Q. Gaps that you couldn't fill? A. That we did not have in our premises.

Q. Did you have any trouble persuading them to do this? A. There might have been some discussion. I don't remember. But I got them.

4855 Q. Do you remember whether they said these things were secrets? A. I don't think that we were thinking of this fact or this problem in a very intensive way at this time. Probably it didn't occur to us at all.

Q. All right. Will you turn to Supplement 8A, Annex 1.

For the record further, Your Honor, I can remember that when these documents were introduced in the Sturzenegger deposition they were described as a total exhibit, and then the sub-parts were always described as supplement thus and thus, Annex 1.

THE MASTER: I wonder, Mr. Schwartz, if you can give me your theory on this line of examination.

MR. SCHWARTZ: I would be glad to, Your Honor.

THE MASTER: You are presenting this witness with certain papers which in your viewpoint come from the Sturzenegger company files and which evidence disregard, let us say, of the Swiss secrecy laws. Is that the idea?

MR. SCHWARTZ: Exactly, except it is not even a matter of opinion. It also not only obviously came from the Sturzenegger files, but the witness is confirming that as we go along. It is obvious in the past in this case where

when it was to the benefit of the plaintiff and of Sturzenegger—because we remember, that he is at least a large stockholder—the papers were produced by the Sturzenegger firm for the benefit of plaintiff to recover their stock, the very same

4856 situation that is before Judge Laws and you.

THE MASTER: Well, there has been no objection to this line of examination. To go a little bit further, what is your inference from that in respect of the good faith of Chemie as distinguished from Sturzenegger?

MR. SCHWARTZ: Two parties very closely associated have in the past cooperated without haggling about technicalities, for the benefit of one and the other. When it is to the interest of one of them not to produce, they present an appearance that ~~one~~ is unable to control the other. When husband and wife go along for years in a very amicable fashion, and then husband protests that he is unable to get his wife to sign the release or the mortgage, it is permissible to think, we would submit, that husband is, shall we say, making it up as he goes along.

It is cumulative. It is part of a great history, if you will allow me to develop it further.

THE MASTER: I think you have a perfect right to develop it.

MR. SCHWARTZ: If you remember, even Judge Laws once commented—and that is the origin of this thought. He said, "We will have to see if plaintiff has been able to have access to the Sturzenegger papers. One side oughtn't to have access if the other side can't."

That was a very offhand, curbstone thought, but it is

4857 a perfectly valid thought. Plaintiff is able to get any Sturzenegger papers it needs to prosecute this lawsuit, but when the time comes to get Sturzenegger papers for the defendants to look at, "Oh, no."

THE MASTER: All right, I think I understand your theory on it. What I am thinking over in my own mind is the

fact that there are counter-inferences, due to the fact that Sturzenegger has a natural interest in this suit being successful, hence you wouldn't expect that they would, arbitrarily at least, throw any obstacle in the way of its success.

MR. SCHWARTZ: Unless, as we argue, the exhibition of those papers would be unfavorable to the plaintiff's case.

THE MASTER: I think I am premature anyhow. Certainly you have a right to produce this testimony at this time, and the inferences are naturally a matter of argument on your side and also on Mr. Wilson's side.

BY MR. SCHWARTZ:

Q. We are at Supplement 8A, Annex 1. Do you have that in front of you, Mr. Germann? A. Yes.

Q. That seems to be, is it not, a photostat of an original letter from Sturzenegger to Industriebank? A. Yes.

Q. So you do agree, or do you remember, that this
4858 could only have been photographed from the files of Industriebank? A. Yes.

Q. No one else could have this original? A. Yes.

Q. Right. Where are the files of Industriebank? A. They are in the possession of Industriebank.

Q. In the possession of Industriebank. Is that all the years from 1940 until the present? A. Yes.

Q. Now we have explored the ownership of Industriebank, so we won't go into it again, but it is one of these companies closely associated. Is Industriebank a bank or is it a bank in kind of an incidental way? A. According to Swiss law, it is a bank, otherwise it could not call itself a bank. It just would not be allowed to do so.

MR. WILSON: Does it have any customers?

THE WITNESS: No.

MR. SCHWARTZ: You may have redirect examination.

BY MR. SCHWARTZ:

Q. You say they are in possession of Industriebank, but physically, of course, the files of Industriebank are in the

Sturzenegger premises? A. It is the same building, but it is a separate

4859 locale.

Q. Separate room, you mean? A. Yes.

Q. I see. And they pay rent to Mr. Sturzenegger? A. I don't know. I imagine yes. And they have separate employees.

Q. Annex No. 3 to that Supplement 8A is another original communication from Sturzenegger to Industriebank. Am I right? A. Yes.

Q. So all the comments you have made about Annex 1 would apply to Annex 3? A. Yes.

Q. Supplement 8B, Annexes 1 and 3, are both original communications from the Greutert firm to Industriebank. Am I right? A. Yes.

Q. So all the comments you have made as to the Annexes to 8A would apply to these? A. Yes.

Q. Going back for a moment to 8A, Annex 1, do you see that handwritten initial on the upper right? A. Yes.

Q. Do you recognize that as being someone's handwriting?

4860 A. No.

Q. You don't? A. No, I don't know.

Q. Do you have what you might describe as a good informed guess as to whose handwriting it might be? A. It could be the handwriting of the bookkeeper of Industriebank at that time.

Q. Mr. Rush, by any chance? A. No. He had died at that time.

Q. Will you turn to Supplement 10A, Annex 1. That is described as a letter from Sturzenegger to Mithras, dated 4-30-40. That is, do you agree, a photograph of an original communication from Sturzenegger to Mithras? A. Yes.

Q. What is that filing stamp down on the left? A. That is a bookkeeping stamp of the firm of Sturzenegger, if I recall correctly.

Q. Not of the firm of Mithras? A. No.

Q. It is distinctly not a customary stamp that you buy in any store. A. It is a stamp of the Sturzenegger firm, and I recall when I was in the firm that I saw that stamp.

Q. Well, then, I think you just agreed or you were about to agree that this is a document in the possession of

4861 Mithras. It seems from the stamp to be a document in the possession of Sturzenegger. A. No. This stamp is affixed to the paper when it is being written, and then it goes to the bookkeeping department of Sturzenegger.

Q. But this is the original, Mr. Germann. A. O. K. It is put on the original.

Q. Put on the original? A. Yes. I recall that.

Q. You mean before it is sent to Mithras it is rubber stamped? A. The bookkeeper puts his sign to the document that he passed it in the books, and then it will be signed and then it will go out.

Q. Does the bookkeeper also write in the stamp the page of the ledger on which he enrolled the information? A. I think so, yes.

Q. The client learns from the stamp and the written number the page that has been recorded? A. Yes.

Q. In the Sturzenegger books? A. Yes.

Q. Then this is, do you agree, a document that could only have come from the Mithras files? A. Yes.

4862 Q. Mithras had been dissolved, I think, by the time you filed this administrative claim? A. Yes.

Q. Where were the books of Mithras physically at the time you filed this claim? A. They were in the possession of the Sturzenegger firm, because it had been—my recollection must be correct—a wholly owned corporation of Sturzenegger at that time.

Q. Whose consent would Mr. Sturzenegger need in order to exhibit papers in his possession having to do with Mithras and Chemie? Take them one by one—Mithras. A. Mithras, I should say nobody, because it is a dissolved corporation and the papers are in his custody.

Q. Whose consent would he need to exhibit correspondence with Chemo? A. That's a ticklish question.

Q. It is a 100 percent subsidiary, is it not? A. Yes.

Q. Annex No. 3 of Supplement 10A is again a photostat of original correspondence between Greutert and Mithras? A. Yes.

Q. And all your comments as to Annex 1 would apply to this one? A. Yes.

Q. You will note there is no rubber stamp on this one

4863 such as there is on Annex 1: A. No.

Q. Is that because there is no transaction here that requires recording in the books? A. Yes.

Q. And Supplement 10B, Annex 1, is again an original communication between Greutert and Mithras, is it not? A. Yes.

Q. All your comments as to the earlier letters with Mithras would apply to this one? A. Yes.

Q. And Supplement 10C, Annex 1, is the same again, original correspondence from Greutert to Mithras? A. Yes.

Q. And Supplement 10D, Annex 1, is again the same, is it not? I am sorry. That seems to be a carbon copy. Otherwise it is between Greutert and Mithras, is it not? A. This is between Greutert and Mithras, and it is a carbon copy which seems to come out of the Sturzenegger files.

Q. And could it come from anywhere else? Do you remember from where it came? A. No, but it cannot come from anywhere else.

Q. Turn to Supplement 11C, Annex 1 Am I right that that is a carbon copy of a letter from Greutert to Voorindu in 1937? A. Yes.

4864 Q. And that could only have come from the Sturzenegger files? A. Yes.

Q. Whose consent, Mr. Germann, would Mr. Sturzenegger need in order to expose to inspection correspondence between himself and his firm and Voorindu? A. I think

we needed this, Dr. Sturzenegger's, consent, but at the same time we had a direct right, because Voorindu was a wholly owned subsidiary of ours.

Q. In discussing compliance with Judge Laws' order with Mr. Stürzenegger, did you ever argue to him that you and he were jointly the whole owners of certain companies, and that at least as to those companies he should comply with Judge Laws' order by giving you the documents to produce? A. I did not put it this way. We thought about these corporations, about their accounts with Sturzenegger, and about the importance of these accounts with Sturzenegger, and there again we felt that the huge amount of documents the order asked for would have made it ridiculous if we would have turned up with a few papers.

Q. So in order not to appear ridiculous you did not comply with the order. A. No, that's——

Q. You say that you and Mr. Sturzenegger together had power to produce his correspondence with Voorindu, and that

4865 the reason you didn't was that you did not want to be ridiculous? A. We would have had to institute a special procedure for these few papers, but bulk of which you again had already.

Q. What procedure are you referring to? A. The procedure with the Federal Attorney, because all these documents were seized in 1950.

4897 Q. Did I call your attention to Supplement 11(C), Annex 1, Mr. Germann? A. Yes, sir.

Q. That is a carbon of the letter to Voorindu? A. Yes.

Q. I think that is the first letter in this series to Voorindu. And did I ask you whose consent Mr. Sturzenegger would have needed aside from Swiss officers such as the Federal Attorney to exhibit a letter of Voorindu in his files?

MR. WILSON: I think the question has been answered.

THE WITNESS: Yes.

By Mr. Schwartz:

Q. Well, ordinarily I would be glad to take your recollection, but it's kind of important to me, so would you mind answering it again? A. It was a wholly-owned subsidiary of Interhandel, so it was——

Q. Of Interhandel alone? A. I think so at that time.

Q. I see. All right. A. I mean through Osnion.

Q. Annex 3 is a typed copy of a letter from Voor-
indu
4898 to Greutert. Do you see that? A. Yes.

Q. Now, when Mr. Sturzenegger testified, he said, or I think he said, he couldn't remember why a typed copy was used instead of the actual letter or the carbon copy. Can you help us on that? A. No, I cannot. That is the paper I got from Mr. Sturzenegger.

Q. I see. As is? A. As it is.

Q. And the same comment I suppose as to the earlier letter from Voorindu? A. Yes.

Q. Annex 3, bis., copy of letter Greutert to Voorindu, 1937. This is a carbon copy. Could have come only from the Greutert files? Right? A. Yes.

Q. Annex No. 5, copy of letter Greutert to Voorindu in 1939. Again a carbon copy. Could have come only from the Greutert files? A. Yes.

Q. How about Annex 7? A. This too is a copy of a letter addressed to Voorindu from Sturzenegger.

Q. Only from the Greutert files I suppose it could
4899 have come? A. Yes.

The Master: On what theory was it that those various annexes concerning the various companies were attached to the proof of claim?

Mr. Schwartz: Oh, sir, the administrative requirement was that a claimant trace his chain of title before a certain point of time. Now, as Mr. Germann has testified, they could not trace their chain of title because there were gaps. So, as further he has testified, they went to Mr. Sturzeneg-

ger and said, "Can you fill in the gaps?" And Mr. Sturzenegger did by giving them the documents.

You see, these are all steps in the sale of certain shares which were claimed. These are the "A" shares I think, or the "B" shares—I forget—and title went from Chemo to Greutert to Grutchemie Konsortium, and so on, over the years. If you remember, Mr. Jacoby examined on this problem at great length when Mr. Sturzenegger was testifying.

THE MASTER: I was trying to think back in my own mind as to what the measure of control was in various companies to see if a general rule could be formulated. Possibly not.

MR. SCHWARTZ: These are all companies that you might say are very closely associated with Greutert either as parents or subsidiaries. Voorindu and Chemo were wholly-owned subsidiaries of one or both firms put together.

4900 Industriebank is kind of a parent of Sturzenegger. Mithras was once a company subsidiary to Sturzenegger and/or Chemie. Then there is another correspondence with American I. G. Chemical Corporation. That was a subsidiary in a certain sense since at that time Greutert owned many or most of the shares.

MR. WILSON: When are you talking about?

MR. SCHWARTZ: I'm coming to Supplement 12(A), which attaches letters between Greutert and American I. G. Chemical Corporation in 1930.

Now, the variety is rather large. There is a consortium which is something. There is a subsidiary. There is a parent. Now, if other companies such as Perpetua and Rigidor had been involved in this chain of title, obviously correspondence with them would also have been produced.

THE MASTER: I was thinking of it from the viewpoint of waiver, but I can see now on reflection that no general rule can be applied to them as a group.

MR. SCHWARTZ: Well, you can apply——

THE MASTER: Namely, that Chemie or Sturzenegger or any controlled company could waive as to all of them. But let that go. You go ahead.

MR. SCHWARTZ: I think they did in practice by exhibiting these things. Somebody purported to say, "I will not bother about bank secrecy. I will expose, exhibit, produce, because
4901 I desire to." And that was that.

BY MR. SCHWARTZ:

Q. I would like to show you, Mr. Germann, what was Exhibit 689-8242 in the Sturzenegger deposition, which was also Exhibit 51 to the SCO's memorandum of November 14, 1947 which I think you will find by comparison is the photograph of the original corresponding to Supplement 11(C), Annex No. 3. Yes, that is so. You have 11(C), Annex No. 3 in front of you? Right? A. Yes.

Q. And here is the original photograph of what I believe to be an original of that same document. Do you agree, as I think Mr. Sturzenegger agreed, that Exhibit 689 is no doubt the photograph of the original of which 11(C), Annex 3 is a typed copy? A. Yes, sir.

Q. Do you have any explanation of how it is that the original in the form of 689 was available to the SCO but that Mr. Sturzenegger supplied you with a typed copy of that same document for attachment to your claim? A. No, I cannot.

Q. All right, sir. Annex No. 5 of 11(C) is again a carbon of a letter to Voorindu, is it not? A. Yes.

Q. It came from the Greutert files?
4902 A. Yes.

Q. Annex No. 7 the same thing? A. Yes.

Q. Annex No. 9? A. That's the copy of a letter by Voorindu to Greutert.

Q. Right. But do you remember that as a copy in view of the fact that it has a rubber stamp? It seems to be a signed original. A. Yes. Well, I mean it may be a duplicate.

Q. I see. A duplicate original? A. Yes.

Q. I see. Came from the Greutert files? A. Yes.

Q. Annex 1 to Supplement 11(D), Mr. Germann? A. Yes.

Q. An original from Greutert to Voorindu? Right? A. Yes.

Q. Came from the Greutert files? A. It must be a copy of a letter to Voorindu on a printed form.

Q. I see. Well, who else could have had this copy except Voorindu or Greutert? A. It must have come from the Greutert files.

Q. None of these documents attached to your claim came from Holland? Am I right?

4903 A. Except that they had been dispatched.

Q. I mean at the time you got them. You got them all from Mr. Sturzenegger or from your own files? A. Yes.

Q. Supplement No. 12, Annex No. 1. This is described as an offer by Greutert accepted by A. I. G. dated 1929. Do you know from whose files this came? A. From Greutert's files.

Q. Right. Annex No. 2 to Supplement No. 12. This is an original letter from American I. G. Chemical Corporation to Greutert dated 1929. This obviously came from the Greutert files, did it not? A. Yes.

Q. Supplement 12(A), Annex No. 1, is an original letter the same way, A. I. G. to Greutert. Came from the Greutert files, did it not? A. Yes.

Q. That stamp or the incoming stamp is the one that frequently appears on incoming mail in Greutert? Am I right? A. Yes.

Q. Annex 2 to Supplement 12(A), the same thing, original letter to Greutert from A. I. G. A. It seems not to be here.

Q. Well, I will show you my copy, which is not the one marked by the reporter but is, as you will note—I

4904 believe you will agree that is the mark of being one of those filed by Mr. Wilson on your behalf? A. Yes.

Q. And you agree, do you not, that that photograph, Annex 2 of Supplement 12(A), is a photograph of an original letter from A. I. G. to Greutert? A. Yes.

Q. That came from the Greutert files? A. Yes.

Q. Now, can you think of other instances in the history of the association of the Greutert-Sturzenegger firms and Chemie in which similarly papers from the files of Greutert or Sturzenegger were given to I. G. Chemie for purposes of its own, to convey to somebody, to apply to something, to give someone information? A. It might have happened occasionally, but I do not see a concrete example right now.

Q. Can you think of the application to the military government in Germany filed by you and Sturzenegger with respect to your claim to ownership of Deutsche Laenderbank shares? A. Yes.

Q. That was another such case, was it not? You had a joint attorney, a Mr. Gubler, and he filed an application with the military authorities to get them to recognize

4905 Greutert's and Chemie's claims to the Laenderbank stock, and did he not submit a great number of documents from the Sturzenegger files? A. Yes, sir.

Q. Hmm? A. Yes.

Q. Do you remember anything about those documents and how they ranged as to the kind of firm or person who was mentioned in them? A. Greutert was mentioned in them. Laenderbank itself. Heydtkontor. I think, Ammoniakwerke-Merseburg. That's what I can think of right now.

Q. Individuals too? A. Yes, I think so. I do not recall the names. Schmitz was mentioned.

Q. You understand by "mention" I have not meant merely a name mentioned. I have meant that financial transactions with or about or from or through such individuals and companies were actually in the records that were presented. A. Yes.

Q. Did you collaborate with Mr. Sturzenegger in the gathering of these documents? A. Well, there again I asked him to prepare for Dr. Gubler the evidence for the ownership of Greutert-Sturzenegger in Laenderbank

4906 Q. Also the ownership of Chemie? Am I right?

A. That was very simple. They were our own files.

Q. Let me see if I understand it. Greutert owned as of that application or claimed to own a certain number of Laenderbank shares, and Chemie claimed to own another number. Am I right? A. Yes. The claim was filed that way.

Q. And you might call it a joint claim by two claimants to ownership? A. Yes.

Q. Each for his own part. But they combined and filed one application? A. Yes.

Q. Am I right you have corroborated me that in the course of your joint application Mr. Sturzenegger exhibited great numbers of documents from his files? A. It's not by far not that much, but substantial.

Q. Not as much as in the claim? A. As this claim, no.

Q. I should think many more. There are some 50 or 60 documents attached to Mr. Gubler's, all from the files of Sturzenegger I think. A. I think these are more, but I may be wrong. I'm sorry.

Q. I see what you mean. It is true there are some

4907 40 or 50 papers attached to your claim, but only about 15 seem to have come from the Greutert files. Am I not right there are many more from the Greutert files in the Gubler application? A. I think so, yes.

Q. For the record, that application was Sturzenegger Exhibit 133-24139(30), part 30. There were 30 documents attached to the application there, or 29. Part 30 was Dr. Gubler's application in which he is stating he is acting for Interhandel and Sturzenegger and states that he is attaching certain documents and parts 1-29 are the attached documents.

And then there is another block of documents that Dr. Gubler also attached which is to be found as Sturzenegger Deposition Defendants' Exhibit 134-24144(27)-27. There are 27 parts to this.

At the time you were presenting your joint claim with Mr. Sturzenegger, did he say that he could not or would not or was he reluctant to produce these documents because of secrecy or economic espionage? A. I cannot remember that the question came up.

Q. Just to fix the date for the record, this application was filed in 1949, June 22, 1949, just a few days before Judge Laws' order, and the administrative claim was filed sometime before that, sworn to by Mr. Germann and Dr. Iselin on September 29, 1947.

* * *

4922 GERMANN EXHIBIT 10(A)

Translation

H. STURZENEGGER & CO. Basle 2, 27th May, 1949
Telegrams: HASTURBANK
Telephone: 4 18 20
Current account: Swiss National Bank
Post cheque account: V 3512

Internationale Industrie- &
Handelsbeteiligungen A.-G.,
Basle.

On the basis of Art. 14 of our partnership contract, we have the right to pay off your sleeping partnership in our firm at any time with one month's notice, on the agreed basis.

We are taking the liberty of informing you herewith that in agreement with our limited partner we have decided to make use of this right to make a settlement and to repay to you the remainder of your sleeping stake in our firm to the nominal sum of

Frs. 1,250,000.—.

According to the decisive stipulation of Art. 14 of the partnership contract, the repayment has to take place with 150% of the nominal stake, whereby the settlement can take place completely or partially by delivery of securities in lieu of payment. As we have not come to any more detailed agreement as to the securities which might be transferred to

4923 you, we propose to pay the whole settlement sum of 150% of the nominal stake to you in gold and hope you find yourselves in agreement with this.

Yours truly,

sig. H. Sturzenegger & Co.

4924 Germann Exhibit 11(a)

Translation

H. Sturzenegger & Co. Basle 2, 27th August, 1949.
Telegrams: Hasturbank
Telephone: 5 00 20
Current account: Swiss National Bank
Post cheque account: V 3512

Internationale Industrie- &
Handelsbeteiligungen A.-G.,
Basle

We refer to our letter of 27th May a. c., with which we informed you of our decision to repay you the remainder of your passive stake in our firm to the nominal sum of

Frs. 1,250,000.—.

In consideration of the premium of 50% due to you under the contract, the total settlement sum amounts to

Frs. 1,875,000.—

which we are placing at your disposal in gold according to the proposal we made at that time, excluding the dif-

ference arising from the settlement which we have credited to you on current account.

Yours truly,

sig. H. STURZENEGGER & Co.

* * *

4925 GERMANN EXHIBIT 12(a)

Translation

OFFICE OF THE SWISS FEDERAL ATTORNEY

No. Vo/st ORDER.

In the matter of the banking firm H. Sturzenegger & Co. in Basle, St. Jakobsstrasse 46, which has become known to the Office of the Swiss Federal Attorney, concerning the order of the UNITED STATES DISTRICT COURT OF COLUMBIA to produce business records of the banking firm H. Sturzenegger & Co. in the action of the "Internationale Industrie- und Handelsbeteiligungen A.-G., Basle" against the

ATTORNEY GENERAL OF THE UNITED STATES IN WASHINGTON,

in consideration,

that the production of these records would constitute the fact of prohibited economic espionage (Art. 273 penal code) and would also violate the bank secrecy (Art. 47 of the Federal Law of 8th November, 1934, regarding banks and savings banks; Official Collection 51, 134), which offences the Federal Authorities have to prevent in order to maintain the public security and order on the basis of their preventive police power,

it is ordered:

1. All the business records or books of the banking firm H. Sturzenegger & Co. in Basle ordered to be produced by the American judge are herewith confiscated.

4926 2. The banking firm H. Sturzenegger & Co. will consequently be prohibited, until further notice,

from delivering any business records or books or copies of these to third parties or from permitting third parties to inspect their business records.

3. The Federal Police is entrusted with the execution.

Berne, 15th June, 1950.

THE FEDERAL ATTORNEY:
sig. LUTHI.

4939 MR. SCHWARTZ: Yesterday too, your Honor asked, and in the course of conversation it developed that we undertook to supply a list of the companies and individuals as to whom we believe, for reasons in the record or known or provable, either a waiver of secrecy should have been made or could have been made, and I have such a list and I would like to read it into the record if I may.

Off the record.

(Discussion off the record.)

THE MASTER: Any objection, Mr. Wilson?

MR. WILSON: I have no objection to Mr. Schwartz complying with your Honor's request. The legal effect of all of this I may wish to debate later on.

MR. SCHWARTZ: On the legal effect I would like to suggest this: All of this is provable by the Sturzenegger transcript or documents already in the record, so we can either work out my thought of roaming through the record to prove anything we like or, insofar as Mr. Wilson disagrees with anything, he can contradict, and then we can resolve the

4940 issue with specific exhibits.

THE MASTER: Well, with that objection—Okay, Mr. MacCracken?

MR. MACCRACKEN: Yes, your Honor.

THE MASTER: —I think it will be received then.

MR. SCHWARTZ: They are in Groups with categories and headings, and I will give a category. Will the reporter please supply a Roman numeral to each category?

CATEGORY I. Companies which are subsidiaries of I. G. Chemie. And, therefore, the obvious thought occurs that I. G. Chemie could have procured a waiver to be made or made one for its subsidiary Osmon, which is 100-per cent owned subsidiary of I. G. Chemie. It is also the fact that Mr. Sturzenegger in testifying in the transcript of his deposition waived any privilege as to Osmon (Sturzenegger Transcript [R. 6785]). And he in fact testified at length about Osmon at pages [R. 9068-9082] and [R. 6545-6551].

2. Parta, which until 1944 was 100 per cent owned by Chemie through its 100 per cent ownership of Osmon. Mr. Sturzenegger specifically waived the privilege of secrecy as to Parta at [R. 6786] and testified at length at [R. 9083-9445].

3. As a subsidiary to Parta, files as to Mr. Kuhnlein, who was a purchaser of Parta in 1944 under an agreement which was the subject of testimony, and who was the managing

4941 partner, managing director of Parta before that.

4. Voorindu was a subsidiary of I. G. Chemie because it was 100 per cent owned through Osmon. Mr. Sturzenegger waived the privilege as to Voorindu at [R. 6815] and testified at length as to Voorindu on [R. 9862-10067].

5. American I. G. and General Aniline Film was a subsidiary of I. G. Chemie in the sense that it is now 94 per cent claimed by I. G. Chemie. Mr. Starzenegger waived the privilege as to this company at [R. 6801] and testified with respect to it at various parts and places in the record.

MR. WILSON: Off the record.

(Discussion off the record.)

MR. SCHWARTZ: Further with respect to A. I. G., if a waiver was necessary from the present owner under Amer-

ican law that would be from the Office of Alien Property, and that, of course, is to be taken for granted as given.

In connection with this Item 5, there would be several individuals and companies associated with G. A. F. on which a waiver should equally be given or taken to be given. For instance, D. A. Schmitz was an officer of G. A. F. and a client of Mr. Sturzenegger, and Walter Duisberg, Hugh Williamson. There was a company that was owned by G. A. F. called Plaskon. Incidentally, Mr. Sturzenegger specifically waived the privilege as to Plaskon on [R. 6801]. There were other individuals—for instance, Mr. von Rath. This list, of course,

4942 is not meant to be comprehensive, but we do not want to take the burden of saying that what we have not mentioned here is to be taken as disallowed or waived.

Another company is L. D. Pickering and Company. Mr. Sturzenegger waived the privilege on [R. 6801]. That is the street name for the Bank of Manhattan.

Another company is Banque Federale, or otherwise known as Eidgenoessische Bank, holder of 500,000 "B" shares for I. G. Chemie. Mr. Sturzenegger testified as to this bank. I do not have the page reference.

6. A company called Delft, which was a full subsidiary of I. G. Chemie. It was 100 per cent owned through Voorindu.

7. Chimicom, the Paris sales company involved in the Parta matter, was 100 per cent owned by Chemie through Parta. Mr. Sturzenegger specifically waived the privilege at [R. 6822].

8. Another company was International Kantoor, Amsterdam, a 100 per cent subsidiary of Voorindu. I believe Mr. Sturzenegger remembered very little of Kantoor, but what he remembered he was apparently perfectly willing to tell. That would be an illustration of a case where the files would fill out what was almost no memory at all.

II. A list of companies in which I. G. Chemie had very substantial investments. That alone might not of itself

require that a waiver be given or be taken for granted to be

4943 given, but Mr. Sturzenegger specifically waived the privilege as to all of these companies with one exception that I will mention in a minute.

1. Chehamij, which was 49 per cent owned through Voorindu and Parta. Mr. Sturzenegger waived the psivilege at [R. 6814] and testified at length at [R. 10250-10332], [R. 11750A-11753].

As a subhead to this 1, Chehamij had a number of subsidiaries which were selling companies for I. G. Farben. Mr. Sturzenegger's waiver of the privilege as to Chehamij should be taken I submit to be a waiver of the privilege as to Chehamij's subsidiaries.

Sub (a). GMC, Brussels, which was 45 per cent owned by Chehamij, and the remainder was owned and/or optioned to Farben. Mr. Sturzenegger testified, for example, at [R. 10020, 10330]. GMC, Brussels, was seized by the Belgian Government.

Sub (b). Defa. 36 per cent owned by Chehamij. The remainder was under option to I. G. Farben. Mr. Sturzenegger, incidentally, specifically waived the privilege as to Defa at [R. 6815] and testified as to Defa at [R. 9922-9964]. Defa, incidentally, was seized by the Dutch Government.

Sub (c). Agfa Photo, Arnhem, 100 per cent owned by Chehamij. Mr. Sturzenegger had little recollection of

4944 knowledge of Agfa, but he nevertheless testified to it, [R. 10023, 10330-10331]. Agfa Photo, Arnhem was also seized by the Dutch Government.

Sub (d). I. G. Dyestuffs, Manchester, 91 per cent owned by Chehamij. Mr. Sturzenegger testified as to this at [R. 9945-9949, 10010-10016, 10328-10329]. It was seized by the English Government.

Sub (e). A-B. Arto, Malmo, Sweden, 100 per cent owned

by Chehamij. Mr. Sturzenegger had little recollection of the company but nevertheless testified at [R. 10331].

As a footnote to this small group, I mention seizures by Allied governments as indicative of the fact that a waiver should be taken to be granted even if the waiver had not been specifically given for Chehamij, which was the parent of these.

MR. WILSON: Seizures of what by Allied governments?

MR. SCHWARTZ: Seizures of the stock or assets of these companies as enemy-owned or -controlled.

MR. WILSON: And their files as well?

MR. SCHWARTZ: You misunderstand.

MR. WILSON: Which were turned over to you?

MR. SCHWARTZ: You misunderstand, Mr. Wilson. This is a list of companies and matters as to which we desired and felt we should have an inspection of the Sturzenegger records.

4945 MR. WILSON: Precisely why I am addressing myself. You are availing yourself of opportunities to interpolate for the edification of the Master, and I thought it was not remiss that I should call attention to the fact that you have got the papers of all these companies through the seizures of their files by these governments, and they have been turned over to you.

MR. SCHWARTZ: May I ask either for a firm agreement or for an order from the Court that I be permitted to state the list? If Mr. Wilson desires to debate all the things I state as I am talking, we will be here forever, your Honor.

MR. WILSON: I will be utterly silent if you will state the list and only the list, but if you are going to make a speech as you do about each one I am going to interrupt you as long as the Master will permit me.

MR. SCHWARTZ: Well, your Honor, a lawyer may not interrupt his opponent while he is talking.

THE MASTER: I think that it would be useful, Mr. Wilson, to get a consecutive list here, and Mr. Schwartz's explana-

tory statements should be kept to a minimum. But I think they are useful. They are useful to me because it refreshes my recollection as to what measure of control there was and what the fact situation was.

Go ahead, Mr. Schwartz.

4946 MR. SCHWARTZ: These were all subheads, sir, under Chehamij, which was No. 1 of this list of participations of Chemie as to which privilege is waived.

2. Norsk Hydro, in which Chemie owned some 12½ per cent of its stock. Mr. Sturzenegger specifically waived the privilege as to Norsk Hydro at [R. 6821] and testified at length as to Norsk Hydro at [R. 10417-10882].

3. Deutsche Laenderbank, which is 64 per cent owned or claimed by Chemie and Sturzenegger. The privilege was specifically waived by Mr. Sturzenegger at [R. 6817]. Mr. Sturzenegger testified at length as to Laenderbank at [R. 8716-8895, 8915-9064]. If a waiver were necessary after it was waived by Mr. Sturzenegger, it, of course, could have been procured from the military government in Germany.

4. I. G. Stickstoff. Mr. Sturzenegger testified at length as to this at [R. 6702-6731, 8261-8305]. Stickstoff was about 30 per cent owned by I. G. Chemie. Another 51 per cent was owned by German concerns. This is the single case in this category II as to which there was some reservation on Mr. Sturzenegger's waiver of privilege. I think that [R. 6764-6767] show that there was a kind of a split privilege. He waived the privilege as to its affairs but not as to its relationships with Chemie. Some attempt to distinguish between the banker-client and the ownership. That part of the record is not entirely clear.

4947 5. Chemische Fabrik Rohner, which was a subsidiary of I. G. Chemie until one point of time when it was sold. The privilege was waived specifically by Mr. Sturzenegger at [R. 6795-6796 and R. 6798].

6. A pair of companies that go together, Newo and Samia, which were participations held through Voorindu

which is a 100 per cent subsidiary of Osmon, which in turn is a 100 per cent subsidiary of Chemie. The privilege was waived by Mr. Sturzenegger at [R. 6816]. Mr. Sturzenegger testified, for instance, at [R. 9876, 9995-9997].

7. Winnica, which was 50 per cent owned by Chemie until 1943 when it was sold to Farben. The privilege was waived by Mr. Sturzenegger at [R. 6823], and he testified at length on it at [R. 10091-10231].

As a subsidiary to Winnica and as an illustration of the fact that each of these companies involve individuals, many of whom were also customers and connected with Mr. Sturzenegger, both individually and in the course of their business, there was the firm of Kuhlmann, which was the owner of the other 50 per cent of Winnica. The French dye organization. Mr. Sturzenegger testified at length on Kuhlmann at [R. 10091-10231].

And as a kind of footnote your Honor will remember there was a problem of getting some Chemie shares from Paris to Switzerland.

4948 Mr. Wilson: I object to the footnote, your Honor.

The Master: Well, I think you ought to leave out anything controversial if possible, Mr. Schwartz.

Mr. Schwartz: All right, sir.

8. Agfa Photo, Zurich, which until a certain point of time was 100 per cent subsidiary of I. G. Chemie. The privilege was waived as to Chemie's shareholding in this company, and privilege was waived by Mr. Sturzenegger, I mean, at [R. 6779]. And I take it from the record that the privilege was, of course, waived only up to the point of time that it was sold.

9. Durand and Huguenin, which was 100 per cent subsidiary of I. G. Chemie until a certain point of time. The privilege was waived by Mr. Sturzenegger at [R. 6782-6783], and, I think too that the privilege was waived only up to the time that it was sold.

III. Category of I. G. Chemie and its officers and directors.

1. I. G. Chemie itself. Individuals would include the following:

(a) Mr. Gadow, who was a director of I. G. Chemie until 1945. The privilege was waived by Mr. Sturzenegger as to Mr. Gadow at [R. 6770], and he testified with respect to Mr. Gadow often or at least several times throughout the record.

(b) Mr. Fritz Brumm, a former Prokurist at I. G.
4949 Chemie. Privilege waived [R. 6772].

(c) Mr. August Germann, director of I. G. Chemie throughout its life. Privilege waived [R. 6772].

(d) Mr. Walter Germann, managing director of I. G. Chemie. Privilege waived [R. 6771].

(e) Mr. Eduard Greutert, former director, now deceased. Privilege waived [R. 6772]. I would add here Mr. Greutert's estate and in the case of any of these men who have since died, their estates have often continued to be involved in this case as owners of stock in the circle or elsewhere.

Did I say the privilege as to Mr. Greutert was waived at [R. 6772]?

(f) Mr. Hans Sturzenegger himself. His testimony is, of course, a waiver. His testimony plus orders of Judge Bailey and Judge Laws constitute, we submit, a waiver of his affairs.

(g) Mr. Felix Iselin, president and director of I. G. Chemie. Privilege was waived by Mr. Sturzenegger at [R. 6770] except for banking transactions for Mr. Iselin's clients. Mr. Iselin is a practicing lawyer.

(h) Mr. Gottfried Keller, a former director. Privilege was not waived, but we submit that it should be regarded as waivable or to be taken as waived.

(i) Mr. Carl Roesch, a former director of I. G. Chemie,
4950 now deceased. Privilege waived [R. 6772].

(j) Mr. Charles Thormann, former director of I. G. Chemie. Privilege waived [R. 6772].

Category IV. Group of companies which are subsidiaries and participations of the Sturzenegger firm itself. And thus we would submit that a privilege could be procured by action of the Sturzenegger firm.

1. The Axe Trading Company: 42 per cent held by Sturzenegger & Cie. Mr. Sturzenegger testified at length as to the Axe Trading Company. Such testimony should be taken implicitly as a waiver. [R. 9758-9808, 11754-11757].

As a subhead under this, there were two companies which sold goods for I. G. Farben which were participations of the Axe Trading Company. There was the Consolidated Dyestuff Corporation, Montreal, 100 per cent owned or under option to Axe. Mr. Sturzenegger testified at length at [R. 9768-9809]. The second such company was the Dychem Trading Company in Melbourne, 100 per cent owned by or under option to Axe. Mr. Sturzenegger testified at length at [R. 9768-9794].

2. Chemo, 100 per cent owned by Sturzenegger & Cie. The privilege was waived specifically at [R. 6814]. Testimony at [R. 9809-9861, 11758-11773].

3. Delta, 100 per cent owned by Sturzenegger & Cie. The privilege was waived specifically at [R. 6815-6816].

4. Heydtkontor, 100 per cent owned by Mr. Sturzenegger.

4951 At page [R. 8647] Mr. Sturzenegger remembered the name I think, but very little else.

MR. WILSON: You mean literally Mr. Sturzenegger or the Sturzenegger firm?

MR. SCHWARTZ: When I say "he" remembered——

MR. WILSON: No, I mean you said 100 per cent owned by Mr. Sturzenegger.

MR. SCHWARTZ: I mean the Sturzenegger firm. This whole list, Category IV, refers to the Sturzenegger firm.

5. Mapro. The firm Sturzenegger holds participations and options on 51 per cent of the stock of Mapro. The

vilege was waived specifically at [R. 6815]. Testimony s given at [R. 8505-8715, 9758-9808].

As subsidiary to Mapro there are individuals and or- izations such as Gerhardt Fritze, associate of Sturze- ger firm in Mapro, the Hollandsche Koopmansbank, l the Fritze-Greutert Konsortium. As to these three , Sturzenegger testified regarding their dealings in pro. I will supply the page citations.

. Mithras. Until a certain point of time a subsidiary Sturzenegger & Cie. The privilege was waived spe- cally by Mr. Sturzenegger, [R. 6781, 6785].

. Norsk Staal. Former participation of the Sturze- ger firm, some 10 per cent of its stock. It was sold l. G. Farben in 1943. Testimony was given by Mr. Sturzenegger 2 at [R. 8895-8914; 9445-9535].

8. North American Industries, 100 per cent sub- iary of Mr. Sturzenegger. The privilege was waived [R. 6801].

. Synthetic Nitrogen Products. A former subsidiary the Sturzenegger firm. I am not sure of the percentage ownership. The privilege was waived at [R. 6801].

0. Tefiag, or otherwise Technik & Finanz, a former 100 cent subsidiary of the Sturzenegger firm. Privilege ved [R. 6778, 6798].

1. Frucidator Nominees, an account or a kind of an- pty or dummy account through which the Sturzenegger n held Axe Trading shares. Testimony was given at 9773-9782].

2. Theta, later known as Allgemeine Verwaltungs Gesell- aft, Berlin, 90 per cent owned by Deutsche Laenderbank l 10 per cent by Heydtkontor. Parenthetically, Laender- k is otherwise listed as a participation of Chemie and rzenegger to some 64 per cent, as to which the privilege s specifically waived, and Heydtkontor is otherwise and ewhere listed as a 100 per cent subsidiary of Sturze- ger.

MR. WILSON: That is repetition. It seems to me those things can be avoided.

MR. SCHWARTZ: Mr. Sturzenegger at [R. 8646-8649] did not remember or recognize the name of the company.

MR. WILSON: That is repetitious. It seems like it could be avoided.

4953 THE MASTER: Well, aren't you almost at the end, Mr. Schwartz?

MR. SCHWARTZ: No, sir.

THE MASTER: Well, go ahead.

MR. SCHWARTZ: And if I am boring you, sir, it is only because there are many, many companies as to which the parties could have arranged a waiver. Your Honor had the patience and fortitude to sit through some seven-eighths of the Sturzenegger deposition, and this in a sense is a summary by name of company of the companies as to which testimony was given.

THE MASTER: Well, I think it's very useful, and it should go in.

MR. SCHWARTZ: Category V. Companies in the circle, what we call the circle, and associated firms and individuals. At [R. 6763] of the transcript there was a general, almost final waiver as to all of these companies, but they were not completely specified.

1. Sopaley. Privilege waived specifically at [R. 6763, 6797].

2. Rigidor. Privilege waived specifically at [R. 6763, 6790].

3. Perpetua. Privilege waived specifically at [R. 6763 and 6787].

4. Industriebank. Privilege waived specifically at

4954 [R. 6763, 6785].

Subsidiary point, as to 1-4: Mr. Sturzenegger testified at [R. 7460-7566, 11195-11534].

5. Visca. A kind of predecessor firm to one or more of the firms in the circle. Privilege waived specifically at [R. 6801].

6 and 7. Companies which were major clients or closely connected with this circle. Providentia, A. G. Privilege waived [R. 6789]. Fiduziar A. G. Privilege waived [R. 6783].

8. A group of individuals whom we regard as members of the circle because of stockholdings and directorships. At [R. 6763] there was a general waiver for individuals in the circle with a kind of a reservation in case something came up which led to that waiver having a different view—the view of that waiver being held differently—by counsel for plaintiff. The names are as follows:

(a) Jacob Auer. A shareholder in one or more of the companies. Testimony at [R. 7460-7495, 7557-7962, 11196-11503].

(b) Carl Cassani. A shareholder in one or more of the companies.

(c) Joseph Bischoff. An employee of Industriebank and a Prokurist there. Also on the Sopadep board and a Prokurist at Sopadep. Privilege waived specifically [R. 6771].

(d) Carlo Mollwo. A shareholder in circle company or companies. And his estate. Privilege waived I think perhaps

4955 only as to Mr. Mollwo, [R. 6764].

(e) George DuBois. A shareholder in one or more of the companies. Privilege waived [R. 6770-6771].

(f) Karl Grieshaber. A shareholder in one or more of the companies.

(g) Hans Haller and his estate. Privilege waived at [R. 6771]. Perhaps only as to Mr. Haller.

(h) Alfred Schaer. On the Industriebank board.

(i) Mr. Sidel-Steiner. The sole member of the Perpetua board.

(j) Mr. Reinhart Sutter. A shareholder in one or more of the companies. Privilege waived, [R. 6771].

(k) Mr. Basil Werder. A shareholder in these companies; an employee, I think, of Sturzenegger. Privilege waived, [R. 6771].

(l) Mr. Wolfensperger. A shareholder in the companies. On the board of Industriebank. Privilege waived [R. 6771].

(m) Mr. Eduard Greutert and his estate. This is somewhat repetitious and I apologize. He came up elsewhere.

(n) Mr. Heinrich Furrer. On the Industriebank board.

(o) Mr. Johann H. Schaerer. On the Perpetua board. Rigidor, Perpetua, Mithras, Chemica were domiciled in his care.

(p) Mr. Hans Schudel. Privilege waived specifically at [R. 6772-6773]. On the boards of Osmon, Visca, Fiduziar, and

4956 Spicca.

Category VI. The consortia and secretariats on the books of Sturzenegger & Cie. There was much testimony on these.

1. The Elbe Konsortium. Testimony, [R. 8775-8930]. Parenthetically, I do not believe that testimony ran for 150 pages on this. That may be an error.

2. Grutchemie Konsortium. Testimony, for example, [R. 6508-6512, 6525-6530, 6541-6545]. Privilege waived specifically, [R. 6783].

3. I. G. Konsortium. Mr. Sturzenegger testified at [R. 6508-6520].

4. I. G. Secretariat. We have no page reference, but we believe that with the others a waiver was procurable by mere action of Sturzenegger firm together with the Chemie firm. Many of these consortia we believe the record shows were owned jointly by Sturzenegger and I. G. Chemie.

5. Igesol Konsortium. Privilege waived except as to Solvay's interest in the consortium at [R. 6832].

6. V. R. Konsortium. Testimony, [R. 8764-8938 or 8764, 8938].

7. Visca Konsortium. Testimony, for example, [R. 6512-6514, 8845-8921]. The privilege was waived as to Visca elsewhere listed at [R. 6801]. I would like to add to the Visca Konsortium [R. 11330-11331].

4957 8. Other consortia and secretariats on which testimony was given. For instance, [R. 6508-6544, 8733-9080, 9865-9890, 10931-11459].

9. The Hollux Konsortium, which had been a consortium on Voorindu's books and I believe was purchased—all its assets were purchased—by Mr. Sturzenegger's firm in 1938. Testimony was given at [R. 9937-9940, 11787-11797].

Category VII. Firms connected with I. G. Farben and with the Sturzenegger firm.

1. Teerfarben. A former subsidiary of I. G. Chemie and also within this category. Privilege waived, [R. 6881]. Testimony, [R. 6869-7027, 11534-11557].

2. H. Ahrens & Co., Tokyo. Testimony, [R. 11815-11950, 12371-12505].

3. Athanil. Privilege waived, [R. 6817]. Testimony, [R. 7028-7114, 9535-9688]. Mr. Sturzenegger I think had a personal connection with Athanil as well or instead of a connection between firms.

4. Romanil. Privilege waived, [R. 6821]. Mr. Sturzenegger testified at [R. 10333-10404].

5. Budanil. Privilege waived, [R. 6817]. Testimony, [R. 10231-10249].

6. A group of companies in India: Chemdyes, Bombay; Agfa Photo, Bombay; Bayer Remedies. Parta held a participation in Bayer Remedies with funds advanced by Mapro which

4958 also financed large parts of the capital of the three companies with funds provided by I. G. Farben. Mr. Sturzenegger testified on these matters in connection with Mapro, [R. 9689-9757].

7. N. V. Chemische Nitropan. Privilege waived specifically at [R. 6831].

8. Sopi. Testimony [R. 8314-8436].

9. Turana A. G. Testimony at [R. 7372-7381]. It was a subsidiary of Chehamij.

10. Treupha. Until 1943 the capital was held by Mr. DuBois. It acted as a sales agency for Chemiewerk Homburg, in which I. G. Chemie and Farben were majority shareholders. Testimony given at length at [R. 10404-10416].

MR. WILSON: In which company was I. G. Chemie a majority stockholder?

MR. SCHWARTZ: Chemiewerk Homburg, with I. G. Farben. Taken together.

Category VIII. This is an obvious category, your Honor, of I. G. Farben and individuals connected with I. G. Farben. Generally I would like to say there was a blanket waiver by counsel or the witness or both as to I. G. Farben at [R. 6764]. That I think covers all the subsidiaries of I. G. Farben which are many and have different names and degrees of connection, but specifically certain names came up in the transcript.

4959 1. Ammoniakwerk Merseburg. A 100 per cent subsidiary of Farben and really a component part of Farben. Mr. Sturzenegger testified at various places throughout the record.

I think at that same page, [R. 6764], Mr. Wilson waived the privilege as to Farben individuals, unless when they came up he withdrew his waiver. The most prominent of such individuals was, of course, Mr. Hermann Schmitz, high in Farben, high in Chemie, high in American I. G. The privilege was waived very specifically for Mr. Schmitz at [R. 6765-6766].

Other names came up, such as Carl von Weinberg, Walter von Bruening and a Dr. Warmbold who were Farben officials as to which we had reason to believe and the record may support us had accounts with Sturzenegger & Cie. von Weinberg was also an early shareholder I believe in Industriebank.

This list is, of course, merely illustrative. There may very well be—and I think we have every reason to believe reasonably—other Farben individuals who had accounts with Sturzenegger such as the early senior gentlemen named, such as Duisberg and Bosch and others.

Category IX. Pure miscellany.

1. In connection with Mr. Sturzenegger's connection on Norsk Hydro at [R. 10606-10882], we believe that implicitly there would be a waiver for all matters connected with:

4960 (a) Bergens Privatbank
(b) Christiana Bank
(c) Mr. Bjarne Eriksen
(d) Mr. Meinich-Olsen
(e) Nordag
(f) Nordisk Lettmetall
(g) Nordisk Aluminum
(h) Norges Bank
(i) Norsk Creditbank

2. A second group in this miscellany, at [R. 6831-6832]. Mr. Sturzenegger specifically—it may have been counsel; I would apologize if it was—specifically waived the privilege as to transactions with big Swiss banks. I think that was the phrase. And they mentioned specifically:

(a) Credit Suisse
(b) Swiss Bank Corporation
(c) Elektrobank

3. The third category, purely illustrative of a miscellany, Consul General von Haeften— We would think that the lengthy testimony as to the visit to Consul General von Haeften in connection with a letter having to do with the escudo transaction would cover him, but I desire to mention his name specifically.

4. The——

MR. WILSON: Why do your mention his name specifically?

4961 MR. SCHWARTZ: Because I asked about other visits to the Consul General—which might have had nothing to do with the escudos transaction. There may very well be a voluminous file of correspondence with Consul General von Haeften throughout the war.

MR. WILSON: You haven't any justification for making that statement.

MR. SCHWARTZ: I certainly have. I know of one letter and visit, so I think there may be more. This is inspection and discovery, Mr. Wilson, with an order of the Court that we have to have inspection and discovery.

4. The Metallgesellschaft circle, you might call it, companies affiliated, and individually. I think the privilege was waived specifically as to either Metall or the whole circle at [R. 6831]. An illustration of the companies and the individuals who might be involved:

(a) Metallgesellschaft itself.
(b) Montaan Metall
(c) Schweizerische Gesellschaft fur Metallwerke
(d) Rotopulsor
(e) Mr. Traudes
(f) Mr. Alfred Merton
(g) Mr. Rudolf Euler

Some or all of these companies had other relations to the Sturzenegger firm. They are former owners of interest,

4962 former clients and present clients.

That concludes my list, your Honor.

Of course, it is apparent that this list was compiled last night and it could be supplemented, it could be improved. I mean to reserve my right not to bind myself to any particular reason. This is a hurried collection of firms and individuals as to which there is one or more or several reasons to believe that a waiver was given, could

be given, eo instante, should have been given, ought to have been given.

* * *

4989 Q. . . . Did you discuss between June 20th and July 12th with Mr. Wilson in any way—communication, phone, cable, letter—your thought that it would be ridiculous to present only the files about which we knew anyway? A. We're talking now about the Chemie and Osmon files only.

4990 Q. Any files in Sturzenegger as to which you thought it would be ridiculous to present them. A. I must reduce my answer to these two, to the files of these two companies, because these two companies were the only ones which were in our minds, and we did not talk that over over the phone or by cable, if I recall correctly, with Mr. Wilson during that time.

Q. Prior to June 20th and for all the months when this inspection of papers problem was under consideration prior to June 20th, did you discuss with anybody—Mr. Sturzenegger, Mr. Wehrli, Mr. Wilson, anybody at all—the question of getting Mr. Sturzenegger to let you have for inspection such files as he had relating to Chemie, Osmon, Parta, Voorindu, Chemo, I. G. Farben and other such companies? A. We thought up to that time that this would be possible that they could be given, and we were hit from the blue sky on June 21st, and that's where the thing stopped. I'm sure that Dr. Sturzenegger himself would have been willing to hand us files.

Q. What files? Do you mean you're testifying now that up to June 21st when you learned of this order you and Mr. Sturzenegger were in agreement that he would show you lots of files or many files but that you were prevented by

4991 the order? A. Yes. We were under stronger apprehension, because we had learned from the Federal Attorney that he was critical about the disclosure of these papers. We learned from Minister Stucki the same

thing. But we had no firm prohibition to do so, and we thought, as Dr. Stürzenegger had done in the oral testimony, that we could decide ourselves if problems of secrecy would arise.

Q. So you mean to testify, do you not, that until June 21st you and Mr. Sturzenegger were in agreement that you would produce at least a good number of files to the extent you were able? A. I hoped so, yes.

Q. Yesterday and the day before, under Mr. Wilson's examination, you didn't mention this, and you rather said that you did not consider such things as Sopadep because they would be ridiculous. A. I——

Q. Are you contradicting your testimony on what would be ridiculous? A. I don't think so. What I said about that, if I recall correctly, was always arguments after the order of the Federal Attorney was issued.

Q. Well, you certainly testified on direct examination as to events that took place before June 20th.

4992 A. Yes.

Q. You testified to meetings with Sturzenegger and Wehrli and the others. Right? A. Yes.

Q. You did not mention during that testimony that until June 20th or 21st there had been an agreement to produce certain files? A. It was not an agreement. It was the old dilemma. We had the utterances of the Federal Attorney. We had the utterances of Minister Stueki. And we saw the difficulties. But we thought that it would be possible to divulge papers which in our own minds did not constitute secrecy. For example, our own files, Osmon files.

Q. But on direct examination you said you dismissed that because it would be ridiculous. A. Again, I must go back that these arguments that it would be ridiculous were made after we had the order which prohibited anything else.

Q. I see. Now, let's see if we can get one thing straight. Was there an agreement between Chemie and Stürzeneg-

ger firm before the order came that files, some files, would be produced?

MR. WILSON: I object to that question. I think it's unfair in view of the answers that have been given.

MR. SCHWARTZ: I submit the answers have been a little

4993 contradictory.

MR. WILSON: Not at all. He said they entertained some hope. There was no agreement. There was no absolutely binding arrangement at all. They entertained a hope.

BY MR. SCHWARTZ:

Q. What was the exact status of the proposal or problem that some files would be produced—the status before the order came up? A. The status was that we were in that dilemma, that especially Dr. Sturzenegger was in that dilemma, having been notified by the Swiss officials, but still we kept on looking for solutions, and we were confident in these fields that we could at least do something.

5043 BY MR. SCHWARTZ:

Will the reporter please mark as Defendants' Exhibit 1, in this deposition a photostat of an original and a translation, being the letter from I. G. Chemie to G. A. F., dated August 27, 1940.

(The documents referred to above were marked for identification as Defendants' Exhibits 1 and 1A, respectively.)

BY MR. SCHWARTZ:

Q. Mr. Germann, I take it you remember the problem presented by this letter. It had to do with a United States Treasury license to authorize certain transfers of

registered ownership of G. A. F. shares from somebody to I. G. Chemie, did it not?

MR. WILSON: Don't answer yet, please. I must confess

5044 I don't see the materiality of the question. I don't mind your pursuing one or two questions that you regard as preliminary, if it is understood I don't waive the point which I want to make as to the materiality of this.

THE MASTER: All right, ask the preliminary questions, Mr. Schwartz, and then at that stage let Mr. Wilson object.

BY MR. SCHWARTZ:

Q. In 1940, am I not right, Mr. Germann, I. G. Chemie had a problem of securing official approval in this country for the transfer of registered ownership of certain shares to the—

MR. WILSON: Do you want his answer, Mr. Schwartz, based upon his then current personal knowledge, or what he has learned since?

MR. SCHWARTZ: I don't know why we are wasting time on this. It is a historical fact. I want to prove what the nature of this proceeding was, because I have a hundred documents on it, and you don't want the whole hundred in the proceeding.

MR. WILSON: Are they relevant to this case?

MR. SCHWARTZ: Certainly. This is the same kind of think that took place——

MR. WILSON: You mean like the other documents? I see.

BY MR. SCHWARTZ:

Q. Am I not roughly right about characterizing
5045 the problem that was under consideration by I. G. Chemie in 1940? A. Yes. It is a fact I learned later on, probably in 1940 and '41, but I have no current recollection of it.

Q. And you were then in the Sturzenegger firm, and I call your attention to the fact that in this letter I. G. Chemie sends to General Aniline & Film Corporation five documents to assist in General Aniline obtaining official approval, and they say on page 2 of the translation, immediately following the description of the documents, that "these documents, which in part were given to us in friendly cooperation by the banking institution of H. Sturzenegger & Cie." A. Do you want me to answer to the fact that I was in the firm of Sturzenegger?

Q. That we know. A. I was an employee of the firm of Sturzenegger at that time, but I was in the military service.

Q. You said you spent two-thirds of your time, I think, with the firm. A. No.

Q. I am sorry. A. I spent two-thirds of my time in '39, '40, and '41—maybe '42—in the service; and I know that I was in the service all of 1940, and '39, except two short furloughs.

5046 Q. First can you identify the signatures on the letter? A. Yes.

Q. You agree they are photographs of authentic signatures? A. Yes, I have no doubt of it.

Q. And I call your attention to that paragraph following the description of the five documents. Is it a fair translation if I read as follows: "As can be seen without question from the foregoing documents, which in part were given to us in friendly cooperation by the banking institution of H. Sturzenegger & Cie., all of the above-mentioned 900,000 Common B shares, in the acquisition of which we were interested, were acquired from both above mentioned Dutch companies at the end of September of last year by our good friends, the banking institution of Ed. Greutert & Cie., Basle." A. Yes, it reflects the sense.

Q. Taking the five documents that are described there, and assuming that the description is a correct one, the

first is said to be a photograph copy of a carbon copy of a letter sent by Greutert—9/30/39—to Chemo. Now that, do you agree, must have been one of those given to Chemie by the Sturzenegger firm? A. Probably, yes.

Q. Well, taking the description as accurate, it could only have come from the Sturzenegger firm?

5047 MR. WILSON: I object to the question as calling for a conclusion of the witness.

THE MASTER: I thought he answered it, Mr. Wilson.

MR. WILSON: I think his answer was a conclusion. May we have the answer read back?

(The reporter read the answer, as follows: "Probably, yes.")

THE MASTER: Now, do you object to that, Mr. Wilson?

MR. WILSON: Your Honor, as I understand it, it is a deduction that these must have come from the Sturzenegger firm, and I thought the witness said "probably." That was his answer to the prior question.

THE MASTER: Did he answer the last question?

MR. SCHWARTZ: No, he didn't. The objection took place.

MR. WILSON: Do you think it is a proper question?

THE MASTER: I think it is a proper question, yes. Did you hear the question, Mr. Germann?

THE WITNESS: Yes. I deducted from the contents of this very letter. I have no other knowledge.

MR. SCHWARTZ: Off the record.

(Discussion off the record.)

MR. SCHWARTZ: So, Mr. Wilson, we are agreed that you concede the authenticity of the document of which this is a photograph, and you concede that such a letter as this was sent, and that it attached such documents as are described?

5048 MR. WILSON: Do you know that to be a fact?

MR. SCHWARTZ: I do.

MR. WILSON: You do?

MR. SCHWARTZ: I do.

MR. WILSON: Do you know this came from General Aniline Film?

MR. SCHWARTZ: Yes. It will be laborious to work it up. We might end up with the secretary of G. A. F.

MR. WILSON: You know this is a letter that came from G. A. F.?

MR. SCHWARTZ: Yes, by Mr. Sac[illegible], who was then counsel for G. A. F. And by submitting the document, I mean this letter and the five attachments.

MR. WILSON: Now is it my turn?

MR. SCHWARTZ: Yes.

MR. WILSON: I agree this is a genuine letter. I agree it was sent. I agree it was received. I agree that it contained the enclosures referred to therein.

MR. SCHWARTZ: Off the record.

(Discussion off the record.)

MR. SCHWARTZ: The last thing I have, Your Honor, is a proposed statement, or if it could be agreed to it might be a stipulation. You remember that we examined as to Sturzenegger Exhibits 133 and 134, which were joint applications on behalf of Chemie and Sturzenegger to the Military

5049 Government in Germany, claiming ownership of Landerbank stock. That was a letter by Dr. Gubler, attaching a goodly number of documents, many of which came from the Sturzenegger files.

To avoid attaching about sixty documents to this record, I undertook to make some kind of a statement about them. I think you mentioned there might be a stipulation as to their contents. I would like to say what I think is a kind of a summary of that.

The two exhibits are an arbitrary division of a single application, with attachments. Exhibit 133 consists of the application, plus Exhibits 1-29. Exhibit 134 consists of Exhibits B-1-B-22 to the same application.

Dr. Gubler gave two numbered series to his attachments. Aside from the application in Exhibit 133, there are Exhibits 1-29, which include such documents as—and I put them in three categories. One, there are photostats of portions of customers' accounts at Sturzenegger, including excerpts from the Greutert account for Badische and for Ammoniakwerk Merseburg.

The second category is a statement of an account—and by that I mean the technical thing—of Badische, and a copy of the statement sent out. That is Exhibit 3. There are also acknowledgements of the statements of account received from customers Badische, Exhibit 4, and Ammoniakwerk,

5050 Exhibit 5.

The third category is correspondence, as distinguished from accounts and statements of accounts and acknowledgments of statements of accounts, correspondence between Greutert and other firms, from and to Greutert, with respect to purchases and sales of Laenderbank shares, such as a purchase from Badische, Part 1; a purchase from Fugger Grundstuecks A. G., Exhibits 9 and 11; from or to Nederlandsche Maatschappij tot Beheer en Administratie, 13; from Heydtkontor, Exhibits 15, 18, 19, 20, and 21; Ammoniakwerk Merseburg, 16; Hermann Schmitz, 22; and a sale of shares to Eidgenoessische Bank Zurich, Exhibit 23.

I omitted the citations for category 1: The excerpt from the Badische account is Exhibit 2 and from the Ammoniakwerk Merseburg's account is No. 5.

Some of this material gives coincidentally or incidentally information on third persons. For instance, the account of Badische, Exhibit 2, gives some information on the payment made to Delbrueck; a letter from Heydtkontor asks for payment to the account of Laenderbank at the Guaranty Trust Company, New York; another letter from Heydtkontor, Exhibit 7, gives some information on credit granted by Heydtkontor to Fugger Handels A. G.; and a

letter from Eidgenoessische Bank Zurich, Exhibit 24, recites that that bank has accepted an offer of the Bayerische Vereinsbank, Munich, to sell stock.

5051 Exhibits B1-B23, which are Exhibit 134, consist exclusively of photostats of journal entries from the Greutert books, the actual day-by-day credits in each case. The photostat is obviously part of a page, the remainder of which has been covered up, just one journal entry horizontally on the exhibit. These journal entries show certain credits and debits to two categories of people. The first category you might describe as persons in firms outside the Sturzenegger firm, such as the credit to Badische, Exhibit B1 and also Exhibit B4; credits to Heydtkontor, Exhibits B2, B5, B6, B7, B11, B12; credits to Ammoniakwerk Merseburg, Exhibits B2 and B9; a credit to N. V. Nederlandsche Maatschappij Amsterdam, B8; credits to Hermann, Schmitz, B13 and B15; a credit to Professor Bosch, B14; a credit to Frederic Lederer, B19; a credit to Eidgenoessische Zurich, B20; and a credit to Mrs. Bolongaro-Gravennig, B23.

These journal entries also show debits, among others, to Eidgenoessische Zurich, Exhibit B16, and to Dr. L. Schuon, Exhibit B18.

The second category of persons as to whom credits and debits are shown might be described as konsortia and sekretariats, which I think are essentially within the firm, credits and debits to Elbe Konsortium, Exhibits B1, B2, B3, B4, B5, B6, B7, and B8; the V. R. Konsortium, B9; Sekretariat A, B10, B11, B12, B13, B14, B15, B16, and B17; Sekretariat G,

5052 B19 and B20, and just something called "Sekretariat," B21 and B22.

As in the case of the Exhibits 1 to 29 to 133, these exhibits in 134 also give some information as to third persons. For instance, there is a mention of Fugger Handels A. G. in Exhibit B7 as involved in that certain transaction, and about Wilhelm vom Rath in B17, and we have a

reference to something like "This transaction is because of Dr. Wilhelm vom Rath."

That is my attempt to state the variety of persons and companies as to whom some information is given by the attachments to this application which was filed by the attorney for both Chemie and Sturzenegger in their joint behalf.

THE MASTER: Can that be accepted, Mr. Wilson, subject to check by you, or how do you want to handle it?

MR. WILSON: Yes. Why not let it stand as it is, and since this is a trial, before this trial is over if I have any comment or complaint to make about that, or if I have any explanation to offer, I shall ask Your Honor for leave to do it.

THE MASTER: In other words, in effect what you are doing, Mr. Schwartz, is summarizing a document or part of a document already in evidence in a pre-trial deposition or filed here as one of the official documents in the case. Is that right?

5053 MR. WILSON: Yes. The document is filed in court as a part of a pre-trial deposition on the main side of the case, but I am trying to state the facts, so that if there be no objection before the conclusion of this proceeding before you they will be regarded as facts.

THE MASTER: Then let the statement be received, subject to check by Mr. Wilson later on.

MR. WILSON: That's all right with me.

THE MASTER: Is that agreeable with you, Mr. MacCracken?

MR. MACCRACKEN: Yes, Your Honor.

MR. SCHWARTZ: It being understood, sir, if there be no objection or if the thing should never be mentioned again during the trial, they are taken as facts?

THE MASTER: I think so. Is that agreeable to you?

MR. WILSON: That's agreeable.

* * *

5064 THE MASTER: Now, you have spoken of and there has been considerable testimony about waivers by the affiliated corporations, such as Rigidor and Perpetua, Sopadep, Viscr and the others. Is Chemie willing to have those corporations

5065 execute waivers so as to permit the production of their records by Sturzenegger and Company?

THE WITNESS: Chemie is willing to exert all its influence on these corporations and to seek their waiver.

THE MASTER: Now, you understand that influence is not required in the case of the corporations that are wholly owned or controlled by majority control?

THE WITNESS: Your Honor, pardon me, but Rigidor, Perpetua, for example, are not wholly owned or controlled.

THE MASTER: I realize that, but you speak of your exerting your influence, and I want to point out to you in case of certain corporations at least—we needn't name them—there is effective control by an ownership of stock in excess of 50 per cent, so that there wouldn't be any question there of exerting any influence. Now, do I understand you to mean that in respect of corporations not effectively controlled but still corporations wherein Chemie has a substantial interest or can exert some influence, Chemie is willing to exercise whatever influence it has to obtain a waiver?

THE WITNESS: Yes, your Honor.

THE MASTER: For the purpose of the production of these documents?

THE WITNESS: Yes, your Honor.

* * *

5070 BY MR. MACCRACKEN:

Q. Mr. Germann, when did you say that Mr. Schwartz arrived in Switzerland last June to examine these Interhandel papers? A. I think he arrived in Switzerland on July 10 and came to our premises on July 12.

Q. And how long did he remain there? A. To my recollection till August 25th.

Q. And you saw him almost daily when he was there? A. No, but frequently.

Q. Did he say anything to you about appealing to the American Minister to help him in getting access to the Sturzenegger papers? A. No, sir.

Q. And did he say anything about consulting a Swiss lawyer with reference to his right of appeal from the order of seizure? A. No, sir.

Q. Did you say anything to him about the efforts that you were making to comply with Judge Laws' orders? A. No, sir.

Q. He didn't ask you any questions about that? A. No.

There was a short discussion about the
5071 problem on the first day, and from then on the subject did not come up again.

Q. In other words, he didn't ask your cooperation in getting them—assisting him? A. No.

Q. Did he make any suggestions to you as to what you might do to help him get them? A. No, sir.

* * *

5082 DEFENDANTS' EXHIBIT 1(A)

(GERMANN)

Translation

Basle 2,
Peter-Merian Strasse 19
August 27, 1940.

General Aniline & Film Corporation,
New York.

We refer to our two cables of June 15th in which we confirmed that the below listed Common B shares of your company which were previously delivered to you for our

account, in respect of the transfer of which into our name application was made, namely:

400,000 shares represented by Certific. No. 1) both registered in the name of "Chemo" Maatschappij voor Chemische Ondernemingen
200,000 shares represented by Certific. No. 20)

as well as

300,000 shares, represented by Certificate Nos. 32, 33 & 34 for 100,000 shares each, all three standing in the name of Maatschappij voor Industrie en Handelsbelangen,

have been Swiss property since the 30th, respectively, 28th of September, 1939—on which dates they were acquired from the mentioned Dutch companies—and that the "Chemo" Maatschappij voor Chemische Ondernemingen as well as the

5083 Maatschappij voor Industrie en Handelsbelangen, in the names of which companies the shares remained registered after as well as before, merely functioned as nominees. The accuracy of our cabled statement was certified to you previously by a corresponding confirmation on the part of our accountants, Neutra Trust Company Limited, Zurich, a first-class firm of public accountants licensed to practice by the Swiss Government.

In the absence of further notification from you, we must assume that the desired transfer of the shares in question, despite our statements, could not be carried out up to the present time.

In order to expedite the matter pending for such a long time, we take the liberty of handing you herewith photostatic copies of the following documents in order to amplify the ownership transfer which had previously taken place:

1. Photostatic copy of a carbon copy of letter sent by the firm of Ed. Greutert & Cie., banking house, Basle, in-

der date of 9/30/39 to "Chemo" Maatschappij voor Chemische Ondernemingen, Amsterdam, regarding the acquisition of 600,000 Common B shares;

2. Photostatic copy of the original reply sent by "Chemo" Maatschappij voor Chemische Ondernemingen on 10/5/39 to Ed. Greutert & Cie.;

3. Photostatic copy of a carbon copy of letter sent
5084 by Ed. Greutert & Cie on 9/28/39 to the Maatschappij voor Industrie en Handelsbelangen, Amsterdam, regarding the acquisition of 300,000 Common B shares;

4. Photostatic copy of the original reply of Maatschappij voor Industrie en Handelsbelangen of 9/30/39;

5. Certified original declaration of our accountants' firm, Neutra Trust Company, Limited, Zurich, to the effect that our company has acquired the total number of 900,000 Common B shares in question of your company on 4/30/39 from the Basle firm of H. Sturzenegger & Cie. (successor to Ed. Greutert & Cie.) and has since then carried them in its portfolio.

As can be seen without question from the foregoing documents, which in part were given to us in friendly cooperation by the banking institution of H. Sturzenegger & Cie., all of the above mentioned 900,000 Common B shares, in the acquisition of which we were interested, were acquired from both above mentioned Dutch companies at the end of September of last year by our good friends, the banking institution of Ed. Greutert & Cie., Basle.

The circumstance that the shares in question were not taken over by us until 4/30/40 is traceable to the fact that for reasons of security it seemed desirable to take the shares out of Holland without delay in September 1939, but
5085 that we did not regard it as desirable to put the same directly into our portfolio at that time. As a result, the shares in the meantime remained registered in the name of "Chemo" Maatschappij voor Chemische

Ondernemingen and Maatschappij voor Industrie en Handelsbelangen, respectively.

Of importance in carrying out the transfer into our name, seems to us the fact that all of the above mentioned 900,000 shares of Common B stock of your company as evidenced by the aforementioned documents were acquired in September of last year for Swiss account through the medium of the Basle banking institution Ed. Greutert & Cie.

We hope to have simplified your endeavors by the transmittal of the documents enclosed and at this time we would again ask that you use all your good offices in contacting the designated authorities to have the transfer into our name effected as quickly as possible.

Anticipating your advices, we remain

Very truly yours,

INTERNATIONALE GESELLSCHAFT FUER CHEMISCHE UNTERNEHMUNGEN A.-G.
(I. G. Chemie)
Signed) ISELIN AND GADOW

Enclosures
JSB

* * *

5337 Filed June 10, 1952. Harry M. Hull, Clerk.

Proceedings Before Special Master, July 5, 1951.

* * * *

5354 MR. SCHWARTZ: . . .

Now, first, the fact that they filed something ten months later shows that they could have filed it earlier if they had been ardent in their desire to do something about this order. They could have filed certainly the same document ten months earlier. They could have filed a much better document. They could have suggested the order was illegal and hasty and overreaching. They didn't do that at all.

5354

Secondly, the decision which comes back from this subordinate officer, the man whom you would believe had the greatest interest in the world for saying, "I did it. I was right," that decision, your Honor, is—Well, it's so inconsistent it would make Alice blanch. The man says, "You have no right to appeal," and then he proceeds to grant the appeal in part. He says, "I was absolutely right, but I now retreat." He changes his grounds. And what he comes forward with finally is as clear as day proof that the Swiss Government wants to take to itself the functions that Judge Laws sought to exercise when he made this order for inspection.

The upshot of this document, which is internally inconsistent and inconsistent with prior acts and inconsistent

5355 with the note of January 1951, is that the Swiss Government will release paper by paper, you see, like somebody playing open poker, your Honor. They will say, "No, we won't give you that one. We'll give you the next one. We won't give you the next three." They will release papers one by one if they feel they are indispensable to this action. They reserve the right to conceal any document they like without giving any reasons—which is like a public interest clause. And, in effect, they will set themselves up as judges on what we ought to have—something that Judge Laws purported to do and that he had jurisdiction to do when he made this order for discovery.

5413 EXHIBIT 2(A)

SCHWEIZERISCHE
BUNDESANWALTSCHAFT
MINISTERE PUBLIC FEDERAL
MINISTERO PUBBLICO
DELLA CONFEDERAZIONE

Bern, 25th June, 1951

Dr. E. Wehrli-Bleuler,
Lawyer,
ZURICH
Bahnhofplatz 14.

Dear Dr. Wehrli:

As duly authorized representative of the "Internationale Industrie- & Handelsbeteiligungen A. G., Peter Merianstrasse 19, Basle" (Interhandel) you made the following application on 2.4.1951 in the name and on behalf of this company to the Office of the Swiss Federal Attorney:

1. The order of seizure of the Swiss Federal Attorney of 15.6.50 in respect of the banking firm H. Sturzenegger & Co. in Basle is to be countermanded and the banking firm in question is to be permitted to produce its records in the suit of the applicant against J. Howard McGrath, Attorney General of the United States, as successor to the Alien Property Custodian, before the United States District Court for the District of Columbia.

2. Contingently the said order should be modified in the

5414 sense that the banking firm Sturzenegger & Co. be permitted to produce in the applicant's lawsuit those records the production of which is neither a violation of Art. 273 StGB (prohibited economic espionage) not of Art. 47 of the Bank Law (bank secrecy).

My decision in respect of your application is as follows:

a) The said order of the Swiss Federal Attorney of 15.6.50 applies exclusively to the firm Sturzenegger & Co.

5414

in Basle and against the order of the American court in respect of this banking firm for the production of its business records to the United States District Court of Columbia in the suit of the firm represented by you against the Attorney General of the United States in Washington. In these circumstances it is doubtful a priori whether Interhandel is entitled in any way to file the present application and whether it could not be made solely by the banking firm H. Sturzenegger & Co.

b) The application, however, would also have to be refused, even if a subsequent declaration of consent from the banking firm H. Sturzenegger & Co. was produced.

1. There are absolutely no new circumstances. The fact that the American authorities wish to inspect the records of the banking firm Sturzenegger is exactly what gave rise at that time to the issue of the order of seizure of the Swiss Federal Attorney because the banking firm is not identical with Interhandel. As the premises upon which the order was issued

5415 have not changed there is not the slightest reason today to countermand it.

2. Furthermore, there is just as little reason to modify the order of 15.6.50 in the sense of splitting the material seized into secret and non-secret documents, which you request in your contingent application. Not only would there be no guarantee in the procedure which you propose how the banking firm H. Sturzenegger & Co. would make the division of the documents into secret and non-secret but the possibility would also have to be taken into account that Mr. Sturzenegger would be placed under pressure either by Interhandel or by the court. We therefore also refuse a modification of our order of 15.6.50 in the sense of your contingent application.

3. On the other hand we are prepared to release individual documents proved to be indispensable for the suit, insofar as explicit statements are produced for each one of these documents by all the parties having an interest

in them (banking firm H. Sturzenegger & Co., its clients and other individuals or juridical persons participating), from which it should be clearly evident that there is neither a violation of Art. 273 StGB (economic espionage) nor of Art. 47 of the Bank Law (bank secrecy). The Office of the Swiss Federal Attorney explicitly reserves itself the right to refuse to release individual documents without
5416 stating its grounds for this.

Yours truly,

/s/ LUTHI.

6154-6156 [Defendants' Exhibit 1(a) to the testimony of Walter Germann appears at R. 5082-5, *supra.*]

Deposition of Hans Sturzenegger

6437 Washington, D. C.
February 1, 1949

Deposition of HANS STURZENEGGER, witness in the above-entitled case, called for examination by counsel for the Defendants, pursuant to notice, before Claire J. Bubley, a Notary Public in and for the District of Columbia, at Room 501, Hutchins Building, Washington, D. C., beginning at 10:00 a.m., when were present on behalf of the respective parties:

For the Plaintiff:

JOHN J. WILSON, ESQ.,
815 - 15th Street, Northwest,
Washington, D. C.

For the Defendants:

DAVID SCHWARTZ, ESQ., Chief Trial Attorney
Department of Justice,
Washington, D. C.

6438 SIDNEY B. JACOBY, Esq., Attorney,
Department of Justice,
Washington, D. C.
PAUL M. MCGRAW, Esq., Attorney,
Department of Justice,
Washington, D. C., and
LEON YUDKIN, Esq., Attorney,
Department of Justice.
Washington, D. C.

6442 DIRECT EXAMINATION

By MR. SCHWARTZ:

Q. All right, Mr. Sturzenegger, will you give us your age and residence and citizenship and such details, please. A. Yes. My Age—I have been born in 1901, 7th of October, at Schaffhouse, a small city in Switzerland. I am a citizen of Schaffhouse, Swiss citizen, and I am residing at Basle, more exactly Binningen, near Basle. It is like a suburb of Basle.

Q. And your occupation, Mr. Sturzenegger?

6443 A. It is that of a banker.

Q. Beg pardon? A. Of a banker. I am an unlimited managing partner of the firm H. Sturzenegger and Company, Basle.

Q. I understand that you are the sole unlimited partner of the firm. A. Yes.

Q. Is there some distinction between being the sole unlimited partner and the managing partner? A. No, they are just two different things.

Q. I see. So someone could be a manager who was not a sole unlimited partner? A. Yes, a firm could be managed possibly by a person who must not be necessarily an unlimited partner. I think that would be right.

Q. So is that title or position something comparable to the managing director of I. G. Chemie, say?

MR. WILSON: You mean the hypothetical title of managing director of a partnership?

MR. SCHWARTZ: Yes. I am just trying to determine Mr. Sturzenegger's status in the banking firm.

By MR. SCHWARTZ:

Q. You are a managing partner? A. Yes.

Q. You have all the duties of management?

6444 A. Yes.

Q. And those are, as you say, distinct from your status as sole unlimited partner? A. Yes. I should say, perhaps, the quality of being an unlimited partner refers more to the legal liability, isn't that so?

Q. I see. But you are in command of the firm, or certainly the manager of all personnel and all ordinary operations? A. Sure, sure; yes.

Q. And the manager? A. Yes. According to the partnership contract, of course.

Q. Naturally. A. And the terms of this contract.

Q. Yes. How do you become the manager of the firm? By appointment? Are you hired, so to speak, by the whole firm, all the partners? A. I became a partner because this position was offered me—

MR. WILSON: That is not your question. Mr. Schwartz' question is—

By MR. SCHWARTZ:

Q. How do you become the manager? Are you hired by the whole firm with a separate contract?

6445 A. No, it is not a separate contract.

Q. It is part of your partnership obligation that you shall be the sole unlimited partner and the manager? A. Yes, that is right.

Q. Then your functions are somewhat a historic continuation of Mr. Greutert's. When the firm was founded he was

to be the sole unlimited partner in residence in Basle and to act as the active manager. A. Yes.

Q. And you succeeded to those functions? A. Yes. And during a short period, we were both—

Q. Beg pardon? A. During a short period, until his death occurred, we were both unlimited partners.

Q. But he was the manager in that period? A. No, we were both managers.

Q. I see. And there have been only two managers in the history of the firm, first Mr. Greutert and then both of you simultaneously for a period? A. Yes.

Q. And then you? A. Yes.

Q. Will you please, Mr. Sturzenegger, describe your business career from the beginning. We have been working backwards. I would like you to begin at the beginning, your first

6446 job, your training, taking each one successively. A. I don't know where I should begin.

Q. Perhaps with your education. A. Yes. I have come through the schools at Schaffhouse, which is my native town. I finished at gymnasium there, and afterwards studied at the universities of Zurich, Geneva, Munich, Zurich again, and Leipzig. And I finished my studies at Leipzig and there I got the doctor's degree.

Q. Excuse me. Did you concentrate on particular things? Were you trained in banking or law or economics or medicine? A. At the beginning I studied art, literature, and then changed and concentrated on law, and my studies were finished in law. And soon afterwards I—

Q. Pardon me. If you should like to smoke, it is perfectly all right. A. Thank you. Soon afterwards, I made a stage—I think that is the right expression, a stage—I was in the bank, Banking Institute in Zurich, to—

Mr. Wilson: An apprenticeship?

The Witness: Apprenticeship, that is it. I was not on a paid basis, just to make myself acquainted with the banking business.

By Mr. Schwartz:

Q. About when, so we can begin your business career
6447 with the date. A. That was about, I should say, '29. I am not absolutely exact in my memory of it. About that time, about '28, maybe, I went to England to improve my poor English. And then I was offered a position, made the acquaintance of Mr. Greutert, came to Basle, and joined the firm definitely in '31. After—

Mr. Wilson: As an employee?

The Witness: As an employee, that's right. As an employee.

After having been a few months in Frankfurt with the business firm Metallgesellschaft A.G. and afterwards with the other, with Mr. Greutert, and afterwards in Berlin where I made the acquaintance of several men of the I. G. Farben and Laenderbank and so on. But then, in '31, I came back and definitely was employed by Greutert.

Mr. Wilson: Off the record.

(Discussion off the record.)

By Mr. Schwartz:

Q. These trips to Frankfurt and Berlin, they were in the nature of learning the ropes, as we say, among the people who did lots of business with the Greutert firm? A. It was a suggestion by Mr. Greutert who liked I make the acquaintance with his good business friends of himself.

Q. Naturally, at that time, Metallgesellschaft was
6448 an important business friend. It was either still a partner or had just stopped being a partner: is that right? A. I beg your pardon. I didn't understand the question.

Q. I was saying that naturally at that time, in '31, Metallgesellschaft was certainly at least intimate with the firm of Greutert. A. Yes.

Q. It had just been a partner or it was still a partner? A. It was just the time where exchange, if I remember right, took place. But, of course, there were friendly terms.

Q. Yes, of course, that is it. A. Then and still afterwards.

Q. And when you went to Frankfurt, was it purely social or did you actually work in the business, at the financial end of the business, so that you could be familiar with the financial end of the business? A. Well, I had opportunity to look into different offices, but of course it was on a more or less superficial basis.

Q. And about how long did you stay there? A week? A month? Two months? A. No, about a couple of months.

6449 Q. Couple of months. And then about the same thing in Berlin? A. About the same thing in Berlin, yes.

Q. And in Berlin, the offices that you say you superficially looked at or examined, they were which offices? A. Well, the offices of Laenderbank and I. G. Farben Zentralfinanzverwaltung, they called it.

MR. WILSON: Central Finance.

By MR. SCHWARTZ:

Q. That is ZEFI, is it not, Z-e-f-i? A. That is ZEFI.

Q. So ZEFI is the Central Finance Administration of Farben. And you mentioned a company before you mentioned that. A. It was Laenderbank.

Q. Did you mention Laenderbank? A. Yes.

Q. And they were in the same building? A. In the same building.

Q. And who did you meet and become acquainted with there? A. Oh, I made the acquaintance in the Laenderbank, for example, of Mr. Pfeiffer and different other people in minor positions, who I do not remember, maybe Mahr, Moser, maybe other ones, and different people, of course, of I. G. Farben.

6450 Mr. Schmitz, and—well, quite a number of them.

Q. To go back to Frankfurt—I beg your pardon. Did I interrupt you? A. No, I have nothing.

Q. To go back to Frankfurt for a moment— A. Yes.

Q. —Frankfurt, of course, was the seat of Farben as well as Metallgesellschaft. When you were in Frankfurt, did you observe or have any contact with the Farben offices there? A. No, not at all.

Q. Not at all. I see. The Farben financial offices being in Berlin, you didn't. A. Yes.

Q. All right. I am sorry to have interrupted you. You were only at 1931. Go on, please. A. Well, then I got what we call in Switzerland a Prokura—it means power of procuration. How would you put it?

MR. WILSON: That is all right.

THE WITNESS: Just the authority to sign, sign jointly with another one authorized to sign. I think that was in '34, if I am not wrong.

By MR. SCHWARTZ:

Q. You are right.

6451 A. Yes. And then, in October of '38, I became a partner, entering into partnership with Mr. Greutert. He was the senior; I was the junior. And after the death of Mr. Greutert, which occurred, to my recollection, in the first days of September '39, I was the only remaining unlimited partner and carried the firm on. And according to the laws of the country; the name of the firm has to be changed because there cannot be possibly a name of a deceased person in such unlimited partnership in the Commerce Register.

So, I think it was in the beginning—I don't remember the exact date—of '40 where the firm's name was changed from Eduard Greutert and Company into H. Sturzenegger and Company, which is still the firm name today, up to now.

Q. I see. A. And, as you question me about my business

career, I perhaps should add that in '40—I think at the general meeting, stockholders' meeting, which took place on June 29, 1940, I was elected a member of the board of I. G. Chemie.

Q. And you are still? A. And am still a member.

Q. To go back to 1934 for a moment, you became a prokurist at that time? A. Yes.

Q. Now, that is, of course, a position of some confidence

6452 and responsibility. The senior or more trusted employees of a firm are made prokurists, isn't that right? A. Yes, that is right.

Q. And that was three years after you joined the firm? A. Yes.

Q. If I may say so, you are a fortunate person. You said you made the acquaintance of Mr. Greutert and joined the firm, and your rise was, of course, a very substantial one. You were then, as we say, being groomed to be a partner, were you not? A. At that moment? Do you mean '38 or do you mean just right in the beginning?

Q. Well, it would be logical to think that from the beginning it was destined that you would become a partner. A. I think that, perhaps, is an overstatement. Of course, in my mind I had the hope, in case I should decide to stay with the firm, which I wasn't sure of at all in the beginning.

Q. We have seen various statements to the effect that you are related to Mr. Greutert. A. No, I am not.

Q. I confess I don't know where those statements have been made. I have that vague recollection. A. No.

Q. Are you a relation by blood or marriage?

6453 A. No, not at all, not in the least. It may be accounted for by the fact that we both, Mr. Greutert and myself, are from Schaffhausen, you see.

Q. There is no relationship, either by blood or marriage? A. No, no. It may be mixed up also in certain respects with Mr. Germann. He was a nephew.

Q. Of Mr. Greutert? A. Of Greutert, yes.

Q. And which Germann is that? We have two, don't we? A. The younger one.

Q. Mr. Walter Germann? A. Yes. It may be that this just has been mixed up. I am not related myself.

Q. You mentioned as part of your business career both Greutert and Chemie. Of course, you are a director or officer of other corporations as well, are you not? A. Well, there are companies of minor importance where, during the course of time, I have become a member of the board. For instance, Immobiliengesellschaft St. Jacob A.G.

MR. SCHWARTZ: Off the record.

(Discussion off the record.)

By MR. SCHWARTZ:

Q. You say that is of minor importance. What is that, Mr. Sturzenegger?

6454 A. It is a small corporation which has for its purpose to administer immovable property, so to speak.

Q. What we would call a real estate corporation? A. Real estate corporation. That is it. And all that was connected with such things.

Q. Yes. And that company owns the real estate in which your firm is located? A. That's right.

Q. Or in which Chemie is located? A. Both. This company owns both the building in which my firm as well as the I. G. Chemie is located.

Q. I see. Both buildings. A. Yes.

Q. At one time, both your firm and Chemie were in the same building, I think. A. That's right.

Q. And later Chemie got its— A. —its own.

Q. —separate building, but the corporation owning the new building was the one owning the old building? A. Yes, I should think so.

Q. About when was that division of buildings, separation of the firms into two buildings? A. I am not quite sure.

In the '30's. It may be, but in exactness of my memory—i may be '35, but I am not quite
6455 sure.

* * *

6456 Q. Dr. Stürzenegger, you were on these minor corporations and you mentioned this Immobilien one A. Yes.

Q. Would you tell us about the others. A. Yes. For instance, Providentia, a holding company, was domiciled a Schaffhausen—at Schaffhause. Schaffhausg is the French version of the same city. And then, a very small company there, I am, too, a member of the board, and that is the Helico, A.G., Neuchatel.

Q. Helico? A. Helico, yes.

Q. Does that do anything specific? A. No. You see i was a company which was closely connected with Dr. Dubois I was on very friendly terms with Dr. DuBois.

Q. Are there two Dr. DuBois'? Are there two in this situation and is that one of the two? A. No. As far as recall, there was only one Dr. DuBois.

Q. All right. And other companies? A. Well, let me see I mentioned Providentia, Immobiliengesellschaft—at the moment it doesn't come to my mind.

Q. I can mention names and that may help you. I am not
6457 at all sure, but there are, of course, Sopadep, Rigidor Perpetua, and the companies in the— A. —in the circle.

Q. In the Greutert circle. A. No, I am not a member of the board.

Q. Not a member of the boards of those? A. No.

* * *

6459 Q. When you became a partner in Greutert in about 1938, am I right in thinking that called for a personal investment? You purchased a share of the capital of the firm? A. That's right.

Q. And was it not a hundred thousand? A. Hundred thousand francs.

6460 Q. Swiss francs? A. Right.

Q. And was it later increased? A. It was later increased by 200,000 Swiss francs.

Q. To a total of 300,000? A. To a total of 300,000.

Q. And also when you became a partner, there were then two sole unlimited partners before you? Mr. Mollwo was a partner and you succeeded him; is that right? A. He was a partner—I beg your pardon?.

Q. Am I right in thinking that you succeeded Mr. Mollwo as a partner, that he left his status as a partner in '38 when you became a partner? A. To be accurate, he was not a partner from the legal point of view.

Q. I am sorry. What was he? I thought he was a partner. A. He was—well, I would call him a managing director with the power to sign by himself, not jointly.

Q. I see. A. Oh, he had a high position and was a friend of Mr. Greutert.

Q. You succeeded him as manager, but since he was not a partner, you did not succeed him as a partner? A. It is another quality.

6461 Q. I see. That is the distinction you talked about before. A. Yes.

Mr. Wilson: Did I understand that Mr. Sturzenegger does say that he succeeded to all of Mr. Mollwo's business functions in the firm?

The Witness: No, I shouldn't say that, just that I entered the firm at about the same time when Mr. Mollwo separated from the firm.

Mr. Schwartz: I see.

The Witness: Because it was the time, as you know, he went out to Lausanne, and this other corporation was founded which afterwards was guided by himself.

By Mr. Schwartz:

Q. What corporation is that? A. Sopadep.

Q. I know Sopadep. Mr. Mollwo went to that corporation, is that the idea? A. Yes.

Q. I see. And left the firm of Greutert? A. Yes.

Q. And he had been a managing director? A. Yes.

Q. And you became a managing director, I don't mean to say that you—

6462 A. It is not a matter of title. I became a partner besides Mr. Greutert, junior partner.

Q. I don't mean to say that you succeeded to everything he had done. A. No.

Q. I am just trying to see how the thing went along. A. Yes.

Q. He had been a managing director, I thought you said. A. Well, he was called so, but I should say his quality was like this, because he was authorized to sign with his own signature, not collectively, but alone, you see.

Q. And that is the thing that distinguished him from the others, that he could sign by himself while others who could sign generally signed with someone else? A. Jointly, yes.

Mr. Wilson: May I interrupt from time to time if I can clarify things?

Mr. Schwartz: Yes.

Mr. Wilson: I am not aware myself that the idea of a managing director, that phrase, applies to a partnership, and I have a feeling that perhaps Mr. Sturzenegger doesn't grasp the significance of the phrase.

May I interpose further to inquire whether Mr. Mollwo was a first clerk? Did he have the status of a first clerk of Greutert?

6463 The Witness: I should say so.

Mr. Wilson: And did he have any greater standing than a first clerk?

The Witness: Any credits?

Mr. Wilson: Any greater standing, any superior standing?

THE WITNESS: Yes, he had. He had these personal relations with Mr. Greutert and it so made him into a managing man, you see, without this title being given to him.

MR. WILSON: In other words, he had a share in the responsibility of management?

THE WITNESS: Yes.

MR. WILSON: The management of the firm Greutert?

THE WITNESS: Yes.

MR. WILSON: But he did not have the title of managing director?

THE WITNESS: No.

MR. WILSON: And he didn't have a sole position of management?

THE WITNESS: No, no. That is not usual with partnerships like ours was. This title "director" is more generally used with corporations.

MR. WILSON: Corporations.

MR. SCHWARTZ: Yes.

By MR. SCHWARTZ:

Q. So Mr. Mollwo, who had that status, left to take
6464 over the active duties in connection with Sopadep and you became a partner and manager in that loose sense? A. Yes.

Q. With Mr. Greutert? A. You see, if I may clear that in this respect, according to our Swiss laws, an unlimited partner has this managing quality. He is empowered to represent a corporation. He is to act for the company, not the corporation.

Q. So the managerial status follows along with the status of sole unlimited partnership? A. Yes, quite natural.

Q. And that is why, I suppose, Mr. Mollwo didn't have it fully, because he was not technically and legally an unlimited partner, so he didn't have the full powers of management. A. Yes.

Q. I see. Mr. Sturzenegger, certainly in the time when Chemie and the firm of Greutert were in the same building

they were physically close together, and even afterwards they have always been close together, so I would like to ask you to describe the contacts you had with Chemie, even before you became a director, what you did with them, for them, about them, that kind of thing. A. Well, I was consulted often, especially with respect to questions which arose with regard to the German

6465 currency restrictions, but in many other respects I was on very friendly terms with the leading people, and, you see, that was quite informal. If a special question came up which the gentlemen thought that perhaps I could give an answer to or make a good suggestion, I would just be consulted. Discussions took place, and so it came that I assisted, even before I was elected a member of the board of I. G. Chemie, at several meetings by invitation. It was just natural developments of the relationship.

Q. When you were in the same building, I suppose you could be in and out of each other's offices all the time. A. Sure, sure. Even afterwards. The buildings are not far away from each other. It is quite convenient in this respect.

Q. Let me see. Your firm has, for a very long time, been at St. Jacob Strasse, and Chemie was there until the mid-'30's, and then moved to Peter Merian Strasse? A. Yes.

Q. And you say they are rather close together? A. Yes, rather close together.

6466 Q. Well, perhaps you could tell us the kinds of things you were consulted about, or the kinds of things you were consulted about for Chemie. A. You see, that is in some ways difficult to answer this question, because there were many, many things, questions, every-day questions, that came up, great problems. For instance, I too was consulted and had a part in the discussions about the cancellation of the dividend guarantee. Then there were, long before of course, questions of administering the participations of the I. G. Chemie. You know, Greutert and Company, we were a banking institute. The company was

primarily a holding corporation, which had specific banking business. Sometimes a great part of this banking business was done, as you are quite aware, by Greutert.

Q. By what? A. By the firm Greutert and Company. So I think it would really be difficult to just enumerate all the items I had part in some way or another.

Q. Yes. A. There were many, of course.

Q. Yes. As I understand it, in Switzerland a holding company and a banking company almost necessarily have to work closely together, because—am I right?—the holding company

6467 cannot trade in securities or it cannot do something which only a banking company can do. A. Yes, that's right.

Q. Can you clear that up for us, please? A. Otherwise the holding company would come within the scope of the Bankgesetz, and would be subject to the specific proscription of the banking laws.

Q. Just what is it the holding company cannot do that only the bank can do? I don't ask you for the whole law but an illustration. A. For instance, the most typical, perhaps, is not buy and sell securities as a purpose. The holding company can do that occasionally, but it is not the purpose of the holding company, whereas that is one of the purposes—

Q. Of a bank. A. Of a bank.

Q. So, for instance, they can't buy today and sell next week just to make a profit. A. It is not the normal occupation of a holding company.

Q. But they certainly can buy securities. A. Sure.

Q. But it is supposed to be for the purpose of investment and holding. A. More often it is done by the medium of a banking

6468 house.

Q. By the intermediary help of a bank. A. Yes.

Q. And the firm of Greutert, and later the firm of Sturzenegger, was the intermediary for I suppose almost every

such purchase by Chemie. A. Almost every one is perhaps an overstatement, but for a great part no doubt.

(Whereupon there was a short recess)

By Mr. Schwartz:

Q. Mr. Sturzenegger, perhaps I can help you give us more details of the association with Chemie by suggesting possibilities. A. Yes.

Q. For instance, did you ever for Chemie travel somewhere to execute a certain commission, a certain job, a certain function? A. Especially for Chemie?

Q. Yes.

Mr. Wilson: If you have in mind—if that is a searching question.

Mr. Schwartz: No, and if Mr. Sturzenegger has no recollection of it why I will pass over it. I am just trying to get a picture.

A. Yes, if you hint at that, I think I can remember
6469 that I was once in Berlin during the time of the negotiation concerning the contemplated cancellation of the dividend guarantee contract. That of course was a matter that primarily concerned I. G. Chemie.

By Mr. Schwartz:

Q. That must of course have been somewhere between 1939 and 1940 or some time— A. Yes, I think before.

Q. Before that? A. Yes, I think before that.

Q. Perhaps '38? A. I cannot remember, but I believe to remember that I took part in discussions which occurred in Berlin, most of them—

Mr. Wilson: Before that, you mean it might have begun earlier.

The Witness: Yes.—

Mr. Wilson: 1939 or '40, '37, '36.

The Witness: Yes, '37, '38.

By Mr. Schwartz:

Q. Yes. And did you ever travel elsewhere to do commissions? Did you ever come to the United States, for instance, for Chemie? A. Yes. I have been here twice on business occasions, once 1933, and the other time, if I am not mistaken, 1936.

6470 Q. You mean the United States? A. Yes, in the United States. Well, there I handled and had to do with matters concerning Greutert, but maybe there were matters concerning I. G. Chemie discussed too at the same time. It may be.

Q. That might have happened either time, either of the two visits? A. Yes.

Q. And I suppose when you came it was to General Aniline & Film? A. Yes.

Q. Then called AIG. A. Yes.

Q. And did you travel perhaps to other countries for other jobs?

Mr. Wilson: For Chemie?

Mr. Schwartz: Yes.

A. For Chemie? No, I don't think so. I do not recall it at least. Once I traveled to London to meet an American lawyer—I think it was Mr. Breed—and that may have been also—about subjects concerning I. G. Chemie. It was just a short time trip.

Q. It was a short trip, was it? A. Yes.

Q. And that would have been about when?

6471 A. Well, maybe '37 or '38, I am not sure of it.

Q. You see, I am asking you about traveling, because I think you might remember traveling more than something else. A. Yes.

Q. And you said you had been to Berlin once on the negotiations for the cancellation. A. Yes.

Q. Had you been to Germany or Berlin or Frankfurt at other times? A. Oh, yes, often.

Q. Often? A. Often.

Q. For Chemie, I suppose? A. Not for Chemie. You see, I was often at Berlin, especially at the time when this general compensation—that is the word we used—was prepared and was carried through, the year 1937 especially. There were of course many, many points and questions arose and had to be discussed concerning Greutert as well as I. G. Chemie, because both firms were involved in this wash-up.

MR. WILSON: You mean the offsetting of debts and credits?

THE WITNESS: That's it, yes.

By MR. SCHWARTZ:

Q. The one that is discussed in detail in the SCD report of September. A. Uh-huh.

6472 Q. They talk of the general compensation in 1936 1937. A. Yes, that's right. That made frequent trips to Berlin necessary.

Q. And perhaps other trips for different purposes in those years? A. Yes, also before of course. Sometimes I was there to represent—there was the stock rise in the Laenderbank, and so on, current business questions that came up. During the time were these debts and claims on a large scale.

Q. During the time the debts and the claims were the large— A. Pardon?

Q. Did you say during the time that the debts and the claims— A. Were large.

Q. The debts and the claims between Farben and Greutert? A. Farben and Greutert, and subsidiaries of Farben, affiliated companies. It was ended after this general compensation.

Q. Yes. You mentioned that you were involved in currency matters, that Chemie would consult with you on currency matters. I suppose you were an expert on currency regulations, because that would be so important to your bank.

6473 A. Expert would be an over-statement, but of course it was among my tasks to watch closely over these developments as they were of great importance. You see, these quotations of the blocked Marks and all that affected very much the valuation of our claims, our credits with German firms.

6488 Q. Well, I am not interested in the substance of the
6489 transaction, but only in using something that happened after 1945 and 1946 to distinguish between your familiarity or Dr. Iselin and Mr. Walter Germann. Well, can you give us some important matter that took place after 1945, a matter that I. G. Chemie was very interested in, and then tell us who handled it, so that we can see— A. Who handled it?

Q. Yes. A. Well, it was handled in some way as a team work, I should call it. It was not up to one gentleman.

Q. I understand, but there must always be somebody who does more work than the other people, who informs the other people. A. Yes, and after 1945 it was naturally Mr. Germann, and as to the members of the board, well, Mr. Iselin, as well as myself, because we were residing at Basle, were more available than the others and perhaps more acquainted with many facts.

Q. I think as late as last year, well, certainly about 1945 to 1947, there was the new problem that the Swiss compensation office had. There was the freezing of German assets, and there were investigations of Chemie, and Greutert and Sturzenegger, and there must have been all kinds of meetings with the Swiss compensation officials. After all, they managed to write these two reports which describe the whole affairs
6490 of Chemie and Greutert. Who dealt with them? A. You see, these reports were the result of very intricate and close investigations.

Q. Very intricate—

MR. WILSON: And close investigations.

A. Close investigations, which took place twice, and these investigations concerned primarily I. G. Chemie, and, on the other hand, concerned also my firm, because the connections of course with them were known, and our position as shareholder, and all that, so insofar as the investigation is concerned, I. G. Chemie, Mr. Germann chiefly handled the matter and dealt with the people, and insofar as the investigations came to my firm I had to do it primarily.

Q. But certainly there must have been many questions that concerned both equally. For instance, a transaction in which one had sold to the other. A. Yes.

Q. Or the shareholder relationship that you mentioned. A. Yes.

Q. When that kind of problem was being investigated by the SCO who spoke for Chemie? I suppose it must have been somebody who was with Chemie for a longer time than Mr. Walter Germann. A. You see, Mr, Walter Germann had quite a good knowledge of many things already before he was made a director,

6491 a manager, because of the—

Q. Because of the what? A. Of the connections we had. He worked in my firm, you see.

Q. Yes. A. So of course he had known the banking side, so it was not entirely a new matter for him. He was well acquainted, and as he is very able, in a short time he was quite in the picture.

Q. I see, so he might even have done as well as you could. A. Yes.

Q. On certain things, because he had been in your firm, and he went to Chemie in 1945. A. Yes.

Q. But Dr. Iselin, what is his special forte in the affairs of Chemie? He is a lawyer? A. He is a lawyer.

Q. Is he also what we would call legal adviser or general counsel to I. G. Chemie? A. That perhaps goes too far, but he sometimes has acted as such when specific questions came up, and he used to be very active and much interested in

the whole matter, and as he is residing at Basle and available, I remember that I went often to him, Mr. Germann too. More Mr. Germann.

6492 We talked together, just an informal discussion.

Q. Which Mr. Germann? I think we should always distinguish. A. It is always—

Q. Walter? A. —Mr. Walter Germann, because his father was residing at Zurich, not available in Basle. And now, you see, as to these investigations, well, what had to be done was chiefly to show these gentlemen all the facts, and then there had to be explanations when they wanted them, because it was not so much a matter of negotiations as to show them the picture.

Q. Show them? A. Because they wanted to make their own conclusions.

* * *

6506 Q. Well, then, is this the only instance you can remember of such a power that you had with respect to another

6507 corporation? We were on the subject of your activities with other corporations aside from being a director. A. Well, of course, there may have been special powers for special circumstances.

Q. For specific occasions? A. Specific occasions, yes.

Q. But powers that continued, such as the power of Prokuration or the Handelsvollmacht power? A. I do not recall others for the moment, but may be that you just have something in your files that could refresh my memory.

Q. While we are on the subject of Osmon, Osmon I think is located in Schaffhausen, is it not? A. Yes, it is.

Q. I think it is in another city than Basle. A. It is in Schaffhausen.

Q. In Schaffhausen? A. Yes.

Q. For how long did you have this power? I mean what years? You needn't be too specific. A. Well, I just wouldn't remember. It's just guessing. Somewhere in the '30's.

Q. In the '30's? Do you still have it? Do you recall?
A. Yes.

6508 Q. I see. A. It hasn't been revoked.

Q. So, from sometime in the '30's until the present you have had this power? A. Yes. I think in the late part of the '30's, but I am not sure.

Q. Up to the present? A. Yes.

Q. And I understand that this isn't specific. A. Then if you just ask me to recall other occasions, then there is Grutchemie-Konsortium, but this Grutchemie-Konsortium is, as you know, not a corporation and not a company. It is just a Konsortium. But there I too am entitled to sign, because you asked me, together with its now Mr. Germann. Because it is a Konsortium composed of our two companies, we have powers to sign.

Q. While we are on the subject, you can help us there. Just what is a Konsortium? A. Konsortium may mean different things. It may be a quite informal construction between two or more partners joining for a certain purpose. Then the Konsortium or participants would be these or these. But, of course, it can be otherwise. Very often it just meant an item for bookkeeping convenience—just something put in the books for the convenience of handling, you see.

6509 Q. For the "what" of handling? A. For the convenience of bookkeeping.

Q. I see. Well, let me ask you this: Would you say that a Konsortium always means there are assets? You see, two or more people joining for any purpose—for instance, the relationship of marriage is two or more people. But I am sure that is not a Konsortium. But a Konsortium, then, as you have on your books, in which there is something in which there are assets, where two or more people contribute some property, is that always the case? A. Not always.

Q. What else can they join together? A. Well, sometimes, as I told you, it's not just the joining of people but it's a pure nominal thing for bookkeeping convenience.

For instance, let me try to make it clear this way: We have bought a certain stock—my firm has bought a certain stock—and, well, this stock can be carried in the official balance sheet, but sometimes if it is not wanted to do it this way, then we can just put it in such under this denomination "Konsortium," and then it is not in the balance sheet as debt. That's one possibility.

Q. As a debt? A. No. And it's like a loan. The Konsortium is charged with and owes us these shares.

6510 Q. I see. So a Konsortium in bookkeeping can be just an anonymous name? A. Can be just a name.

Q. So there are certainly these two types of Konsortia—the type that is used just as a bookkeeping convenience just— A. Yes. There is the other type, perhaps more known type, as you put it, when two or more individuals or corporate bodies join for certain purposes, and then normally an agreement is made—how it has been made in the case of the Grutchemie-Konsortium.

Q. And their agreement was made, and I suppose the agreement provides that you can sign on behalf of the Konsortium? A. Yes, I think that is in it too; it is a minor factor.

Q. Now, those which have no agreement, those Konsortia which have no agreement,—I think the November SCO Expose mentioned at least one Konsortium that doesn't have an agreement that governs it. Can you describe such a Konsortium, or that Konsortium if you remember it? A. Oh, they were different, I suppose, such Konsortiums.

Q. Well,— A. For instance, this great Konsortium that was in the

6511 books before the I. G. Chemie was established.

Q. Which Konsortium was that? A. That was I. G.-Konsortium.

Q. Is that the one that is mentioned in the November expose as the Konsortium that has no agreement governing it? A. I should say so. I think so—mentioned there.

Q. Well, that had a very long life, did it not? A. Yes.

Q. You say it existed before Chemie existed? A. Yes.

Q. And does it still exist? A. No, no.

Q. No? A. No, no.

Q. Until about when did it exist? A. I think it didn't exist longer, according to my memory,—but I beg you to recall that I didn't enter the firm before 1931 so it's just what I know afterwards—it didn't exist longer than, according to my memory, 1929—end of 1929.

Q. I thought it had a very long life. A. Or '30. I don't think so.

Q. You think if it was long it was before 1929? A. Yes.

Q. I see.

6512 A. Yes. Anyhow, I don't think that it continued much longer than 1929, because in some way it was—it was like a precursor of I. G. Chemie, that certain values, assets that afterwards went to I. G. Chemie, were handled through this Konsortium.

Q. That is, I think, almost a direct statement from the SCO memorandum. A. Yes.

Q. Yes. They said the "precursor of Chemie." A. Yes. That's a good nomination.

Q. And it contained assets later going to Chemie? A. It has traced where these assets came from, and they saw it in the books and thought that many of these assets or the greatest part went to this Konsortium.

Q. And that was, at least in part—that Konsortium was at least in part—owned by Farben, was it not? A. No, no.

Q. Not at all? A No, it wasn't owned by Farben.

Q. I'm sorry; I thought it was. A. No. As far as I know, not at all.

Q. It belonged to— A. But of course I should say it this way, that Farben had all these years—

Q. I beg your pardon?

6513 A. —had during many years before I. G. Chemie was established entertained large deposit funds with Greutert & Company, and so Greutert was in a position to avail themselves of large parcels of stock. And part of the stock acquired in such a way was put in this Konsortium.

But, please always remember I make this reservation: That has occurred before my time, so my memory is not quite exact.

Q. Yes. But I think you recently went over this again when you presented all these facts to the SCO, did you not? A. Yes.

Q. I see. Then, if I understand it rightly, the I.G.-Konsortium was owned by the firm of Greutert? A. Yes.

Q. But it may have—or did you say the deposits that Farben kept with it were used to buy assets which were put into the Konsortium? A. Yes. You see, in some ways it is perhaps here more pronounced than in other cases, but isn't that a part of the normal banking business, that funds deposited from the side of clients—they may be greater or minor clients—are at the disposition of the firm? And by way of making use of those funds, the firm is in a position to do this and this business, to make loans, or to buy stock, and so on.

Q. But to revert, so it was owned by the firm Greutert, and I suppose that is why it wasn't necessary to have an
6514 agreement governing it. There weren't two members. There was just one member of that Konsortium? Is that right? A. Konsortium member? It was—

Q. One owner, then. A. No, it was, in a legal sense,—to my memory it was owned and managed by Greutert, but, of course, use of funds deposited from others was made. Otherwise, Greutert wouldn't have been in a position to buy such large parcels. It's quite understandable.

Q. Yes. But I only want to distinguish between the ownership and use of money to buy the assets. You owned the assets in the Konsortium? A. Yes.

Q. You may have used one customer's money or another customer's to buy that? A. Yes.

Q. But the customer had the right to the money; you had the right to the assets. A. I should say so.

Q. You might have to sell the assets to repay the customer? A. Yes, yes.

Q. So there was, then, one owner of the Konsortium? A. Maybe there were other Konsortiums.

Q. Of that Konsortium.

6515 A. Of that Konsortium, not to my recollection.

Q. You mean that you do not recollect that? A. Also it seems clear that, if one looks into the books afterwards, mainly funds perhaps deposited by I. G. Farben or affiliates were used to finance the transactions which were handled through this Konsortium. That is, I think, a very good statement of the Swiss composition of this, as the development shows, in some way a precursor of I. G. Chemie.

Q. Perhaps we already have and I am just wasting our time, but I am trying to distinguish between the ownership of the assets and the moneys they perhaps used. A. Yes.

Q. So, if the firm Greutert owned these assets,— A. Yes.

Q. —and there was no other owner,— A. I should think so.

Q. —so there was no other member of the Konsortium,— A. No.

Q. —so you might even describe the I. G. Konsortium as one of those that you mentioned as a "bookkeeping convenience"? A. Yes.

Q. The firm could have put this in a balance sheet— A. Yes.

6516 Q. —as its own assets? A. Well, in one or the other case, I think—I entered the firm later—that perhaps from the beginning or in the course of time the intention of the managing people was to put the contents of this Konsortium afterwards in I. G. Chemie or to handle it this or the other way.

Q. When you speak of the intention of the managing people, do you mean the managing people in that Konsortium or in Greutert? A. No, with Greutert, because the Konsortium was managed by the firm Greutert, especially by Greutert himself.

Q. And naturally, it being their assets, they had intentions as to where those assets should go? A. Yes. And

naturally as the intention to form I. G. Chemie was an intention which—well, the initiative lay largely with I. G. Farben—I suppose, and I don't know it because I was not a party to the discussions, these matters must have been discussed between Greutert and these other people.

Q. I was just going to ask you, because the SCO states that the creation of Chemie was the idea of I. G. Farben, that it was the creation of Dr. Schmitz. And yet you had said that the assets in the I. G. Konsortium went over to Chemie, and you also said that those assets were owned by the firm Greutert. So, I was going to ask you for the connection

6517 between the foundation of Chemie by Farben and the assets that came from Greutert. How does that connection get connected?

MR. WILSON: Now, let me interrupt to say this: The formation of the Chemie Corporation was prior to Dr. Sturzenegger's connection with the transaction.

MR. SCHWARTZ: I understand that. He has pointed that out.

MR. WILSON: If you understand it, this is his recital of some of the things he has learned.

MR. SCHWARTZ: Obviously.

MR. WILSON: And not a binding admission of fact.

MR. SCHWARTZ: Well, obviously.

MR. WILSON: We have no objection to it.

MR. SCHWARTZ: Obviously, Mr. Wilson; he wasn't there when it happened. He's told us that. And we understand that. Further than that, I don't think we need to characterize what he is going to tell us. We just want him to tell us these things. I see he is perfectly willing.

By MR. SCHWARTZ:

Q. So, Mr. Sturzenegger, if the assets were contributed by the Konsortium which was owned by the firm of Greutert, and yet the initiative for the foundation of Chemie

came from Farben, how could Farben arrange the contribution of these assets into Chemie?

6518 A. Oh, that is very easy. Because Mr. Schmitz was very well acquainted with Mr. Greutert, and they were good friends. They had known each other from the time they spent in Frankfurt. Well,—and its just guessing from my side—but I suppose these matters were talked over between the gentlemen, and it was understood that these and these shares taken over by Greutert and put under the denomination and title "I. G.-Konsortium" should be handled this or the other way. That is my conception of how it may have been.

Q. Yes. Your guess or your thought is that it could have been done certainly, and it might have been done, through a personal relationship between Dr. Schmitz and Mr. Greutert, they being so close? A. Yes.

Q. Is it also possible that it was done by the source of these assets? After all, at least some of these assets were owned by Farben before the Konsortium bought them. A. Yes. But it may have been that Mr. Schmitz caused I. G. Farben to put large deposits of funds to the disposition of the firm Greutert & Company, whereby it was understood—just guessing—that such and such assets could or could not be acquired for an ultimate disposition, disposal, towards the contemplated I. G. Chemie. That is just how I —

Q. Well, your records might show where these assets were bought.

6519 A. Well, some of these assets were bought from I. G. Farben, and there were assets which, after they were bought, were sold to the United States—to the American I. G. Chemical Corporation, which was founded in 1929 if I am not wrong, in exchange against "A" and "B" stock of said corporation.

And, well, there were different stocks which, according to the files, I remember now they were bought in such a way by Greutert & Company in order to transfer them to American I. G. in exchange for "A" and "B" shares,

which afterwards in this or the other way came into the possession of I. G. Chemie.

Q. So, the movement of the assets might have been from Farben to the I. G.-Konsortium directly to Chemie, or they might have been from Farben to the Konsortium to A. I. G., or they might even have been from Farben to the Konsortium to A. I. G. to Chemie? Is that three possibilities? A. That seems possible. But please do not forget I. G.-Konsortium was not a body, not a corporation, not a company. Therefore, the party involved in a sale or in a transaction was then the firm Greutert & Company. It must be like that. But beg to remember that all these details are not my own, because they occurred later.

Q. I understand that. But you say the Konsortium was not a party. You mean it was only a kind of another name

6520 for the firm of Greutert? It was a bookkeeping title in the Greutert books? A. You see, just to perhaps try to make it as clear as I can, as I contemplate things it could have been handled in my opinion otherwise. Greutert could have acquired all these parcels of stock which were to be exchanged against "A" and "B" stock without putting it in a separate Konsortium. Then they would have for a certain time shown up in the balance sheet of Greutert. That would be another method to handle it. I think for convenience's sake or other reasons which I do not know, it was made differently. But that is not my own knowledge.

Q. Well, your own knowledge, then, can't extend to the I. G.-Konsortium, because it ended before you came? A. Yes. If I am not wrong it ended—yes, before I came.

Q. But certainly there were Konsortia on the books during the time you were there. A. Yes.

Q. Konsortia have existed in the Greutert books? A. Yes.

Q. Well, you say you might have handled them differently. Why, then, were Konsortia used in the time that you can remember? A. Why they were used?

6521 Q. (Mr. Schwartz nodded affirmatively.) A. Well, there were not many of them, if I am right. There was one of them, a big one—that was the Igesol-Konsortium—and this Konsortium had in some way another character because there were equal participants in this Konsortium.

Q. Other than Greutert? A. Yes. And we had more or less trustee functions in this matter. It was a very complicated matter with many aspects and angles. But, as a whole, it was more like that.

Q. So, a reason for having a separate Konsortium would be obviously that it wasn't just one owner so you need a circle to put around this property? A. Yes, yes.

Q. I see. And others? Do you remember others? A. Then there is one that is this Konsortium wherein these 210,000 20-paid shares of I. G. Chemie were handled.

Q. I don't follow you on that; I'm sorry. A. Well, I remember one other. You asked me if other Konsortiums turned up in my memory.

Q. Yes. A. During the time I was in the firm. And there I recall a Konsortium over which these 20-paid shares of I. G. Chemie were booked and handled. This large parcel was formed, if I am not wrong, in 1938 in the course of a capital

6522 reduction which took place. These shares were handled by a Konsortium.

Mr. Wilson: When you say "20-paid," you mean 20 per cent paid common of which there were some 210,000?

The Witness: Exactly 210,000.

By Mr. Schwartz:

Q. So those were also in a Konsortium? A. Yes.

Mr. Wilson: Did they have a name?

The Witness: It's funny, but I do not even recall the exact name. I think it was I. G. Chemie-Konsortium; maybe otherwise. But just this is another example how these mat-

ters sometimes were handled, because there too you had no participants and there was no Konsortium agreement drawn up because of the special character of these shares, which were actually what in Germany would be called "Vorratsaktien." I don't know if you have something like that.

MR. WILSON: Treasury stock?

THE WITNESS: Must be it. Quite that.

BY MR. SCHWARTZ:

Q. Something like that? A. Something like that.

Q. And I suppose the reason for a separate Konsortium there was that it was a very specific piece of property? A. Very specific, yes. Therefore, it wouldn't have
6523 been agreeable for the firm Greutert to have this enormous parcel in their official balance sheet. And so it was handled as a specific matter under a specific denomination.

Q. And that Konsortium had no members other than the firm Greutert? A. Has no members, no.

Q. Just the firm Greutert? Another bookkeeping device? A. Yes.

Q. Do you remember any others? A. Well, I have mentioned Igesol-Konsortium. I have mentioned this one. Then, of course, I remember the Konsortium that was created in 1937 or 1938 in which chiefly the assets which were carried on before under the title of bookkeeping item "Sekretariats" were put.

Q. Oh, I'm glad you mentioned that word, because I was going to ask you after we cleared up the different types of Konsortia what is a Sekretariat. A. Well, that is just another denomination.

Q. Does it mean exactly what a Konsortium means? Just an alternative word? A. It was handled with us like that. Normally you would, as you have put it before, under a Konsortia, well—something in which participants were. Whereas a Sekretariat, it's already the denomination. The word indicates that it is more an internal thing.

6524 Q. Does that mean that in a Sekretariat typically there would not be any outside participants? That it is clear that a Sekretariat is always owned exclusively by the firm? A. It mustn't be the case, but with us, with Greutert-Sturzenegger Company, it was like that—that especially the assets financed by I. G. Chemie and Greutert were handled through this Sekretariats. And you will see that these Sekretariats especially turn up after this time before the creation of I. G. Chemie has come—after it was established and there are no longer many Konsortiums.

Besides these I have mentioned, there may be others, if you refresh my memory. But then there was this Sekretariats.

Q. So, the Sekretariats come into existence after 1929 or 1928 after the foundation of Chemie? A. Yes.

Q. And they are typically—they are really a Konsortium but they are distinguished by the fact that Chemie and Greutert are the owners, would you say? A. You see, it was—how shall I put it to make it clear? I think from the legal point of view only the firm Greutert-Sturzenegger was the owner, but financed chiefly by I. G. Chemie. And maybe the understanding was that even the ownership should be a combined one, but not separate and not yet distinguished as to the portion.

6525 Q. Perhaps not the division arranged,— A. Yes.

Q. —but there may be a distinction between financing? Joint financing and joint ownership? A. Yes.

Q. For instance, you mentioned that Farben really financed the I.G. Konsortium by keeping money on deposit. A. Yes.

Q. But these Sekretariats that Chemie and Greutert arranged, was it a question of Chemie depositing money which Greutert used to buy these assets, and the assets are owned by Greutert but the money is to be paid to Chemie? Or did they contribute money or property and together own the property? A. Well, that is not easy to say, how exactly it was. I think one could state that the assets and the values

which were carried under this denomination—there it was understood that they should come into possession in greatest part of I. G. Chemie, because I. G. Chemie had raised this money or because it was otherwise understood. At least you saw this result when the Grutchemie Konsortium was established. Then I think, if I recall it rightly, the wholly-owned asset in these Sekretariats was brought in this newly-created Grutchemie-Konsortium and was considered as a pro— —as a participation of I. G. Chemie.

6526 Q. If you give us that German word,— A. It's not the right word. It's participation. Beteiligung.

MR. WILSON: Beteiligung?

THE WITNESS: Yes. That means it would be covered by participation.

MR. SCHWARTZ: It may not be important.

MR. WILSON: Beteiligung is not a corporate word necessarily.

THE WITNESS: No.

By MR. SCHWARTZ:

Q. Let me see if I understood what you meant. You didn't say that Grutchemie and these Sekretariats existed at the same time? You said that the assets out of the Sekretariats went into the— A. Grutchemie-Konsortium.

Q. Into Grutchemie? A. That's right.

Q. What does the "Grut" mean? A. That is the first part of the cable address of Greutert's.

Q. So, the assets from the Sekretariats at one time were all moved over into the Grutchemie? A. Yes.

Q. So the Sekretariats ended at that time, did they?

6527 A. Maybe a small remainder was carried on, but absolutely unimportant. I am not quite sure, but in the whole it was that way.

Q. Do you remember about when that was that Grutchemie succeeded the Sekretariats? A. Yes, in 1937 or beginning of 1938. I recall this so well because it was in some way in

connection with this general compensation I mentioned this morning after this was carried through. Then we have a clear picture.

Q. I was just going to ask you whether that date had any connection. But we were on the Sekretariats, and I was trying to find out their characteristics. Is the first characteristic that they were typically owned by Chemie and Greutert? A. No.

Q. The Sekretariats—

MR. WILSON: By "typically" you mean that was the usual, the general, rule?

MR. SCHWARTZ: Yes.

By MR. SCHWARTZ:

Q. Usually the Sekretariats were the method you used for joining together assets of Chemie and Greutert? A. Yes, whereby in a legal sense of view perhaps it would be wrong to say that they were owned in an ownership sense by I. G. Chemie. I think it was much more—not in
6528 the legal sense—that assets belonging to both were there. Legally I think they have belonged to Greutert according to construction. I just wouldn't be sure now.

Q. I understand. A. But they were largely, for the chief part, financed by I. G. Chemie, and insofar as we understood these Sekretariats' construction it was always the opinion that there were assets carried on which should be the property in some way once of I. G. Chemie as it has been done afterwards.

MR. WILSON: Greutert was a kind of trustee, and Chemie was the beneficial owner? Is that the idea that you are trying to express?

THE WITNESS: Not quite. Insofar as Greutert himself had an interest in it.

By MR. SCHWARTZ

Q. So both Chemie and Greutert had an interest in the ultimate values? A. Yes.

Q. But Greutert was probably the legal owner? A. Yes. I think one could put it this way without binding me on the legal correctness of such a statement.

Q. Now, were there many Sekretariats? First, what were their names typically? Were they named "A," "B," "C"?

A. Yes.

6529 Q. Were they always named "A," "B," "C," or did they have special names? A. Oh, I think they were—no, I think they were "A," "B," "C," and so on.

Q. Just "A," "B," "C"? A. Just "A," "B," "C." Well, perhaps you can refresh my memory in that respect. Maybe there is another one.

Q. At this moment I certainly can't. I am trying to exhaust your memory. A. According to my memory they were all according to "A," "B," "C."

Q. And how many were there? "A" to "F"? Or "A" to "L"? Or "A" to "Z"? A. Oh, there were—maybe perhaps, just guessing, maybe six or so perhaps. But I am not sure.

Q. I understand. A. It's just to give you a line.

Q. A general idea. I was about to say that there were more than two but less than 20 or less than 15. About six, more or less? A. Yes.

Q. Can you perhaps remember their functions or their assets or something to distinguish one from another? A. No, I couldn't. I couldn't say that.

Q. Do you think they had really distinguishing features

6530 one from another? A. You see,—

Q. Surely it couldn't have been just arbitrary. A. Oh, in some ways they were arbitrary. Maybe in other cases they were not so. They were chiefly handled by Mr. Greutert, and I think it was only in the beginning of this period you mentioned that there were so many. At the time when the Grutchemie-Konsortium in 1937 or the beginning of 1938 was established, I think there was left only one or two perhaps.

Q. That is the time when it all wound up? A. The whole was concentrated and simplified.

Q. Have you any idea of the total assets that might have been in the Sekretariats at one time? 1935? 1936? A. No. But to give you an idea, at the time the Grutchemie-Konsortium was established, then I think the whole value of the assets contained and carried in this remaining Sekretariat was about 40 million francs.

Q. Swiss francs? A. 40 million Swiss francs, or 41 or 42, or something like that.

Q. That was, of course, a reduction? There had been more before the general compensation? A. I should say so. Yes. I should say so.

Q. Because the general compensation left much fewer.

6531 assets in Switzerland? A. Yes.

Q. You said that the Konsortia might have been done another way; that they might have been kept directly on the books as assets of the firm Greutert. But the assets in the Sekretariats could not have been kept as assets on the books of Greutert because they were the assets of Chemie and Greutert? A. They could also have been handled in such a way. For instance, just to try to give a picture, if I. G. Chemie had great deposited funds with the firm Greutert & Company and these funds could be used in order to acquire stocks, then instead of placing such stocks in a Sekretariat, Greutert could have held them on their own balance sheet, and it could have been all the same understanding that Chemie should have an option or something like that.

Q. I see. You say the Sekretariats come at a later period than the Konsortia? A. Yes.

Q. That later period you are perhaps more familiar with, and perhaps you can tell us why it was done that way— A. Oh,—

Q. —from Greutert's point of view, from Chemie's point of view. A. Yes. Of course, it had certain advantages to

6532 handle matters in such a way. It had the advantage that the private banking house Greutert had not to blow off the—blow—how should I say it?—to extend too much their official balance, the figure of the stocks—

MR. WILSON: To inflate?

THE WITNESS: Inflation; yes.

By MR. SCHWARTZ

Q. I thought— A. That's right.

Q. I thought you were driving at something else. You said that the firm Greutert what? I didn't understand. A. The firm Greutert so could avoid an inflation in figures of the stock carried on the official balance sheet.

Q. You mean because they were in a Sekretariat account and not on their own account? A. Yes.

Q. They would have fewer assets? A. They didn't appear on the official balance sheet.

Q. Why should that have been important? The firm Greutert was a private banking firm. A. Well, because we had to submit—that is, official balance sheets to the National Bank, and so on. And it is not alway convenient to let other people know exactly what you have, what kind of participation, how the evaluation is, and so on. And there were too, I think, Swiss tax

6533 problems. You see, in one position a large gain could be achieved. Well, if you carried this item on your official balance sheet.

On the other hand, if you have a great loss, you can not compensate perhaps. Whereas, if you just handle it this way internally, you have much more facility to offset one thing against another.

Q. You save taxes? A. Yes, taxes. May be. But may be that we have been lucky to do it. But at least it provides a certain facility, there is no doubt. And then that is from the point of view of Greutert.

From the point of view of Chemie, perhaps one could say this kind of handling of matters made the thing more elastic

insofar that one had the opportunity to fill up a gap if, for instance, I. G. Chemie didn't earn enough for an appropriate dividend, because one could then take it out from the Sekretariat, you see.

Q. But isn't that taking it from one pocket and putting it into another? If they didn't earn enough, they drew on their Sekretariat. I can't see how that helps. A. Yes, but in the Sekretariat you are more elastic.

Q. Well, for instance, let's take the example you gave, and maybe you can elaborate on it so I will understand it. You say if Chemie didn't earn enough money one year it

6534 could draw from a Sekretariat account. I think that too is from the SCO memorandum. They drew the same conclusion. A. Yes. I think they have traced one or two cases when it really was handled this way. Greater amounts were turned over out of the Sekretariats, charging the Sekretariats to I. G. Chemie, because I. G. Chemie was in need of it. So, just to help I. G. Chemie to stabilize the dividend policy.

Q. But I still don't understand how this elastic quality is of value. If they had kept these assets on their own books they would have that, and they could— A. No. If they had kept these assets on their own books then they would have been forced to evaluate the stock on this or that basis according to prescriptions of other law.

Q. Are there laws that govern accounting? A. Yes. You can not just—if a stock is declining you can not evaluate it as you like in a corporation, because,—

Q. Oh, of course you must not misstate. I mean you must not say it's worth a million when it is really worth a dollar. That would be a fraud. A. Sure.

Q. But I still don't understand. After all, they had this money or property in the Sekretariat. They must have evaluated that on their books.

6535 A. Yes. But just to give you an example—I don't know if it's right, but just to try to make the construc-

tion clear—let us take it that I. G. Chemie had given Greutert 20 million francs, just deposited funds with the intention—it was discussed—that let us suppose such and such shares should be acquired by using this and perhaps, in addition, Greutert's money. And then the stocks so were acquired, but I. G. Chemie had in the balance sheet just these—

Q. 20 million francs? A.—20 million. Well, the stock, let us assume, showed a good tendency, went up, and one day they were worth 30 million francs. Well, then, there existed a hidden reserve. And when this was booked and handled as it has been over Sekretariats, then it was concentrated there, and so I. G. Chemie when in need of funds to stabilize its dividend policy—

Q. I see. A. —a certain amount could in such a case be drawn from the Sekretariat without changing the claim I. G. Chemie had against Greutert of 20 million.

I wouldn't say that it has been done exactly in this way, but just to give you an idea how it could be and was under certain instances in the interest of I. G. Chemie.

Q. I think that too is really an illustration of
6536 something said by the SCO. They said, I think, that these Sekretariats were a reservoir of funds. A. That's quite true.

Q. From which Chemie could meet a loss or use money to pay a dividend. A. Yes. And it's not theoretical, because the commission has traced it twice or three times when bigger amounts were transferred in such a way.

Q. So you think it might have happened that way, and you think the statement in the SCO suggests that it probably did because they drew their conclusions from the facts— A. They have gone through the files.

Q. —that you showed them? A. They have seen the facts.

* * *

6537 By Mr. Schwartz:

Q. Mr. Sturzenegger, at one point I was asking you the number of the Sekretariats and you said there might have been six. A. Yes.

Q. And I was trying to find out if you could distinguish them by their subject matter. No, I'm sorry, let's forget that.

I was asking you about the reason for the use of Sekretariats from the point of view of Greutert and the point of view of Chemie, and you explained the Greutert point of view and you were on the Chemie point of view. A. Yes.

Q. And you told us about the use of the Sekretariat as a reservoir. I suppose then, that using the Sekretariat for that purpose had the same value to Chemie as the Sekretariat had to Greutert, because the rise in values would not appear in the balance sheet.

Do I make myself clear? A. Not quite, if I may ask you again.

Q. Well, you said that the firm Greutert's balance sheets would have to be submitted to the National Bank and it was more convenient for business and tax reasons to have the

6538 assets in the Sekretariat. Now, does the same thing hold for Chemie, since this 20 million franc investment that you mentioned might become worth 30 million and it would still show as 20 million in the Chemie books? A. Yes.

Q. And it was to Chemie's advantage for the same reasons as Greutert used the Sekretariat. It meant that the people who saw the Chemie balance sheet did not see the rise in value? A. Yes, that could be, but in a way it is speculative if I would confirm that. But it had advantages to handle matters so for the reasons I pointed out.

Q. Well, your illustration on using the rise in value to stabilize dividends—this is a conclusion from that situation. If the rise in value was not on the Chemie books, then it wasn't seen by the people who saw the balance sheet. A. Yes.

Q. So the use of the Sekretariat was convenient for both

parties for substantially the same season? A. Perhaps not always for the same reasons, but it was convenient for both. Otherwise, I think the gentlemen in charge of it wouldn't have handled it this way.

Q. Would not have done it. But the reasons, if they were the reasons we have developed, then they are the same reasons really, aren't they?

6539 A. At least partly, yes.

Q. Well, what other reasons might there have been or were there? Let's put it more specifically. Can you think of any other reasons that Chemie had for using this Sekretariat method or other reasons that the firm Grentert had? A. I think the main reasons are already hinted at. I do not recall for the moment other reasons, but it may be that the gentlemen who handled that decided that there were other things. But I should say these reasons for me are the main reasons.

Q. All right. Well now, then we were on the number of the Sekretariats and you said there might be six, and I would like to ask you whether you could distinguish some from others by their specific purpose or specific asset that was in them, or even the amount, total value of the assets in them. In other words, what can you remember about the inside of any one of these Sekretariats? A. Well, that I cannot remember.

Q. Well, perhaps I can help you. Would a new one be formed for a particular transaction? A. Could be; could be, but—

Q. You don't remember any particular transaction? A. Well, it could be that—I might just speculate because I do not remember how it was handled. I think it was done in a rather informal way, you see, how it looked convenient to the gentlemen.

6540 Q. And there was—well, for instance, among the Konsortia you remember that one of them had the specific purpose of holding the 20 per cent paid stock? A. Yes.

Q. Can you remember the specific purpose of one of the Sekretariats, perhaps? A. No, I don't.

Q. But there were very substantial assets in them? A. Yes.

Q. There was at least 40 million at the end, and probably much more before the end? A. Maybe.

Q. Perhaps you can remember them as a group. A. Yes.

Q. What kind of assets were in all of them together? A. Well, there were, among others, if my memory is correct, additional A shares of American I. G. Chemical Corporation, which were not yet transferred to I. G. Chemie. That was it.

Q. Other assets, perhaps? A. Maybe there were I. G. Chemie shares, too, for a certain time handled by Sekretariats. I am not quite sure. I have not an exact recollection of all this, how it was handled, just as a whole.

Q. Now, perhaps when you mentioned those two you have

6541 been thinking only of Chemie's assets or the assets that later went to Chemie. A. Yes.

Q. Perhaps you can recall assets of Greutert's in the Sekretariats. A. Well, for instance, Laenderbank shares, if my memory is correct, were in the Sekretariat.

Q. Other assets, perhaps? A. Well, about others I am not sure as to make a statement. Otherwise it would be too much in the line of guessing, you see. But I think—oh, it is perhaps nothing to report, but the Swiss Commission has, of course, gone through the files and has seen exactly what was in it at the moment the Sekretariat was transferred to Grutchemie-Konsortium.

Q. Yes, I understand that all these things are recorded in your files with the exactness that a bank has. A. Sure.

Q. Step by step, everything is recorded. A. Sure.

Q. Before we finish the Konsortia and Sekretariats, I just want to run over all the names that you might remember. The Sekretariats, you think, did not have special names but they were only A, B, C? A. I think A, B, C.

Q. And the various Konsortia are the I. G.-Konsortium,

6542 the Igesol-Konsortium, the Grutchemie-Konsortium —you mentioned the I. G. Chemie-Konsortium— A. Yes.

Q. —which held the 200,000 20 per cent common? A. Yes.

Q. What other names do you perhaps remember? A. Among the Konsortia?

Q. Yes. A. Well, there were names like Visca.

Q. Like what? A. Visca.

Q. Visca. A. Just a name that comes up to me, but you remember it was all the time before my period.

Q. Oh, that is an old one, is it not? A. I think so.

Q. That was active in the 1920's? A. Yes.

Q. And about when do you remember that continuing to? Do you have any recollection of when that ended? A. No, I have not.

Q. Do you think you remember it existed when you entered the firm? A. I cannot recollect; sorry.

Q. Any other names that come to your mind?

6543 A. Not at the moment.

Q. Now, the I. G.-Konsortium, you think, existed for a good long period before '29? A. Yes.

Q. But it ended about '29? A. Yes, that is my recollection.

Q. The Grutchemie started in about '37? A. '37 or '38 and is still continuing.

Q. Still continuing. The Igesol—about what were its dates? A. Igesol was wound up, if I am not wrong, about '40.

Q. About '40. Visca you don't remember the closing date of? A. No, I don't remember the exact closing date, but I think it was wound up, liquidated, in '40.

Q. '40? A. '40.

Q. About '40? A. About '40, yes.

Q. Yes. And it lasted through the '30's? A. Yes, it had begun before '29.

Q. Yes. I thought you didn't know very much about it because it was before your time, but then it was— A. —as it continued.

Q. I see.

6544 MR. WILSON: Which is this?

MR. SCHWARTZ: The Visca-Konsortium.

THE WITNESS: Igesol-Konsortium is what we are talking about.

By MR. SCHWARTZ:

Q. We must have got it confused. A. I had the impression I was talking about Igesol.

Q. The Visca-Konsortium—do you remember how long it existed? Into the early '30's? Middle '30's? A. That I don't remember.

Q. The Igesol-Konsortium? A. That I remember that I stated that according to my memory it was liquidated at about '40.

Q. About when had it begun? A. According to my memory, before '29. When, I don't remember.

Q. I see. All right. Do you remember who owned the Visca-Konsortium? A. No.

Q. Was it an exclusively Greutert Konsortium or a Greutert Konsortium with others? A. That I do not recollect, because that—I should say it was liquidated in—early in the '30's, maybe, before I had knowledge of it.

* * *

6613 Q. So, in about September 1939 the firm of Greutert established this auxiliary office in Lucerne. Can you tell us the reasons, the occasion? Just what took place there? A. Well, a flat was hired and was made at the same

6614 time the domicile of Perpetua A. G. And from then on—maybe a little before; I do not recall the details—Perpetua was domiciled in Lucerne. And as Perpetua was predominantly—what should I say?—under the influence

of Greutert-Sturzenegger, as we had the balance of the shares, these localities were available also for Greutert's for their purposes.

And that was done according to the line that many Swiss banks and enterprises in this serious time took. Many of them had their locations and special flats somewhere in the mountains in the case of need.

Q. You mentioned that you moved the domicile of Perpetua to this flat, or to this city? A. Yes.

Q. Did you also move the seat of the Greutert firm there? A. The receipt?

Q. Does your firm have a seat? A city? As a corporation does? A. We have just a domicile inasmuch as we are entered into the commercial register.

Q. Of that town? A. Of the city of Basle then. And that was not changed.

Q. That was not changed?

6615 A. No. Another hypothetical change was made which I remember and which concerns as well the firm Greutert-Sturzenegger as I. G. Chemie. That was when the war broke out or soon afterwards or before. There was a Federal decree by which it was stated that in case of an occupation of Switzerland then the seat of the Swiss government could be moved to another country. And that corporations or companies could be given the possibility to be registered in an official list, and this register meant that in case of need the legal domicile of such a company or corporation would be regarded as changed to the place where the government's seat then was supposed to be.

Q. Very well stated. Mr. Wilson couldn't have done it better.

MR. WILSON: Couldn't have done it as well, sir. (Laughter.)

MR. SCHWARTZ: Very well said.

THE WITNESS: And this was done as well as by Greutert-Sturzenegger and Company as by I. G. Chemie.

By Mr. Schwartz:

Q. That, as you said so correctly, was hypothetical? A. That was hypothetical, because it hadn't to be carried through. We wanted first to avail ourselves of this possibility.

Q. Yes. But to return to the transfer to Lucerne,
6616 the domicile of Perpetua became Lucerne? A. Yes.

Q. It was either moved to Lucerne or perhaps it was in Lucerne at the time. Did the domicile of the firm of Greutert change to Lucerne? A. No.

Q. I think you said "no". A. No.

Q. It was just an auxiliary office? A. Yes.

Q. And how big was it, or what was in it? People and files or just files? A. Files, and I might say that one of our staff who is now dead, Mr. Haller, he spent a lot of his time there, especially in the most dangerous moments. For instance, when the attack on the Netherlands or Norway occurred. I remember that then we put stress on it that somebody was residing there in case of need.

Q. And what was his function there? Did he do business or was he just there to prepare the office in case of occupation of some sort? A. Just to prepare, especially to prepare and—well, he had to look to the files there, and I think some preparations were made in such direction that if anything should happen that Mr. Haller should be empowered to do the necessary
6617 things.

Q. I see. A. It was impossible to foresee every detail, but we tried to prepare for service in case of need.

Q. Was there any particular reason for choosing Mr. Haller to go as against— A. Yes, there was one particular reason, because nearly all of our staff were in some way, of course, not free, as there was military service.

Q. I see. A. Auxiliary service or direct military service. But Mr. Haller was not in very good health, and he was of a certain age, about nearly 60 years old.

Q. As a matter of convenience? A. So he would be free and available. Apart from that he had a very good picture, because he was an old bookkepper and acquainted with most of the important things.

Q. I see. So he went. And I suppose they had a stenographer or a clerk or something like that? A. Yes.

Q. And he took what you regarded as your most important files or crucial files? A. Well, yes. At least part of it.

Q. At least part of the important files? A. Yes.

6618 Q. And I. G. Chemie did not move its domicile there? A. No.

Q. And as Mr. Wilson helped you to remember, it is right that no Chemie people went there? A. No, but—well, maybe. I do not recall it. Maybe for a short time just bringing some files and sorting them one of Chemie's people was also there. I do not recall the specific facts. That could have happened naturally.

Q. Well, if it had happened in any quantity—for instance, that the management of Chemie would move there—that would have been a matter of some importance. And perhaps by suggesting it—for instance, who was the then manager? Now Mr. Roesch is. Was he the manager then? A. Well, he was—

Q. 1939? A. He was active. Mr. Gadow was still active.

Q. In that period Roesch and Gadow were together the managing directors? A. Yes. Well, they were those who, as I explained yesterday, watched through the daily work.

Q. I see. While not under a resolution together, they were the people who spent most of their time? A. Yes.

Q. They were de facto managers?

6619 A. De facto. Yes; that's right.

Q. Did either of them go to Lucerne with a retinue of assistants? A. Did they go, you asked me?

Q. Yes. A. Well, I am sure they have gone several times.

Q. To that office? A. To that office, yes, and maybe to bring files there or to just meet somebody, meet myself for instance, to talk the matter over with Mr. Haller who was

well acquainted, you know, with the files. Formerly he was Prokurist for a time of I. G. Chemie too. And so he was acquainted with these matters too.

Q. You mentioned that they might have gone to talk to you. Did you spend any time at the Lucerne office? A. Not continually, but I was often there.

Q. I see. And about how long did this auxiliary office last? It doesn't exist today, does it? A. No, it doesn't exist any longer. But of course, after the war finished, the chief purpose was no longer existing. But then Perpetua, well, had its domicile there. And we didn't change it outwardly.

Q. So you still have the premises, I suppose, and Perpetua— A. No, no, it's now finished, but—

6620 Q. They are all out? A. Yes.

Q. Was there one formal point at which the firm of Sturzenegger left those offices? For instance, does the firm of Sturzenegger still have any of its people or files there? A. No.

Q. You say it's all closed out? A. Yes.

Q. But was there a point of time at which the firm of Sturzenegger took all its files and people back and left only Perpetua there? A. I think that was done not just one day but on several occasions. Part of the files were brought back when there was no longer any danger. And so right away it was clear. It was only left for Perpetua for a certain time.

Q. And the same thing happened for Chemie's files? A. I should say so.

Q. As the emergency seemed to be over, all the files of Chemie came back? A. Yes, I should say so.

Q. And so today there is no auxiliary office either for the the firm of Sturzenegger or Chemie? A. No.

Q. And all the files of the two companies, of the firm and the company, are on their respective premises?

6621 A. Yes.

Q. I see. This is rather important. I don't want you to just— A. Yes.

Q. So you can be sure, can you, that all the files of I. G. Chemie are on its premises and all the files of the firm of Greutert are on its premises? A. I should say so. I should say so.

Q. No arrangements for the loan of space— A. No.

Q. —by anyone else? A. No. Just if one matter has to be considered, it will be that someone sends perhaps a dossier to a lawyer or so. Well, these are exceptions, of course, but—

Q. Yes, I understand that. A. As a general rule your statement would be correct.

Q. But that requires that the dossier of one be in the other's premises,— A. Yes.

Q. —but that is for a specific purpose, and it comes back when the specific purpose is over? A. Yes.

Q. It may remain there for a rather long time, if the matter is still pending? A. Pending. That's right.

6622 Q. But it is only, as you said, to a lawyer? A. Yes.

Q. That suggests the question of the convenience of interchange of conversation and visits between the firm of Sturzenegger and Chemie. They are located just around the corner from each other? Is that right? A. Yes. You see, it's like that (illustrating by pencil and paper). St. Jakob Street is a rather large street, and there (indicating) would be the premises of Greutert-Sturzenegger. That is our building. And here is Peter Merian Street, at quite an angle. And here are the premises of I. G. Chemie (indicating). That is one building. It's not one; it's built together. This one (indicating) is an individual house.

Mr. Wilson: Semi-detached.

The Witness: Semi-detached, yes.

By Mr. Schwartz:

Q. So they face on different streets but their premises are close together. Are there any buildings between the premises of Chemie and the premises of Greutert? A. No.

Q. What is this (indicating)? Grass? A. Just a garden belonging to this (indicating). Sturzenegger.

Q. I see. A. As I told you yesterday, both premises, both

6623 buildings, belong to this corporation Immobilien-Gesellschaft.

Q. I suppose the same landlord, the same corporation, owns the land on which—well, naturally. A. That's right.

Q. So actually if you walk out the back door of Chemie, you can step right into the garden of— A. Well, you must pass a garden door. It is closed, but you can go—

Q. I see. A. You can use the way.

Q. The two premises are really adjoining? They touch each other? A. They are adjoining. That's right.

Q. And if you wanted to, you could have arranged for entry by back doors, but I suppose it's just as easy to walk around the corner. A. Oh, yes. Of course it is. All here together.

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6626 Q. Now, I suppose that when the Swiss Compensation Office was on the premises they were there for a very substantial time; a week once, and two, three or four months again, that they disarranged the business quite a bit, didn't

6627 they? A. I didn't get this question all right. Pardon me.

Q. You do recall the time when the Swiss Compensation Office was making its investigation? A. Certainly.

Q. June of 1945 for a week, and then in November 1945? A. Yes. It was for some months.

Q. Three or four months? A. Yes.

Q. Were they on the premises constantly? They said six investigators participated in the investigation. A. Uh-huh.

Q. And they said that they had examined all the rooms on the premises of I. G. Chemie. A. Yes.

Q. And of Sturzenegger. A. Yes.

Q. And that they examined some 250 dossiers of Chemie and 450 dossiers of Sturzenegger containing files, about so many thousand, and so many account books. A. Yes.

Q. Now, were they there then for many weeks? Did they sit and turn over the pages? A. Oh, yes.

Q. And read them?

6628 A. Oh, yes, so they did. The first investigation was for a shorter period.

Q. A week? A. No, some weeks. Isn't it said there?

Q. I'm sorry. June 11th to July 7th. A. Yes. About a month.

Q. About a month? A. Yes.

Q. And, well, what did they do in that month, in June and July of 1945? Did they also sit there and turn over pages, or did they ask questions? A. They did both. They went through the premises and made sure where the files were and said, "Well, give me this heap or another one." They went just to give them a survey or picture of the whole. Then they asked for more. They had interrogations with different people, especially Mr. Germann. They went to myself, to my firm, made the same there. They asked where other dossiers could be, asked where I. G. Chemie or Sturzenegger had treasuries or safe deposit boxes, and so on.

Q. I understand. And all that—

6629 Q. Those statements you made about the Compensation investigation, that was particularly in June, in June and July, the first one? A. Yes, first investigation.

Q. And as you described it, they did not sit and read every document in the two houses. A. Well, that perhaps would have been impossible, just every document, in a month or so.

Q. Yes, yes. It was a combination of questions, interrogations—A. And they have, of course, gone through many documents, but I don't think they have looked into all.

Q. Yes. But later, in the second investigation, they did? A. Yes, much more.

Q. They say they did, they examined all these documents. A. It was done very thoroughly.

Q. Now, it is not quite clear—I don't find it quite clear—whether they say they examined every document on the premises or just they examined every room, and then they list the number of documents. Do you understand that they examined every document or—put it another way: Do you understand

6630 that these numbers that they give, 250 dossiers in Chemie and 450 dossiers in Sturzenegger, that those are all the dossiers there are? A. That is difficult to say for me, but they were shown all that they wanted to be shown, and they have gone through the whole building, have seen all the rooms, have picked out what they wanted, and have gone through things very thoroughly.

Q. I was wondering whether—they said they examined so many. Does that strike you as probably all, 250 and 450? A. That is difficult to estimate.

Q. Yes. Well, in your own firm, for instance, 450 dossiers—does that sound like it is all the dossiers? A. That seems to be the bulk, maybe even all.

Q. I don't mean exactly. A. Yes.

Q. Yes. Now, a dossier is some kind of folder that contains individual pieces of paper? A. Yes, normally it is.

Q. So we might call a dossier a file jacket, this brown thing I hold up (indicating)? We call it a file jacket. A. Yes.

Q. And the files that they say—they say 250 dossiers contained 23,000 files. By "files" our translator is no doubt referring to a word that means one piece of paper. A. One piece of paper or—it is a phrase I don't

6631 know—maybe two or three pieces of paper are just—

Q. —clipped together? A. —clipped together, and that might be so in my opinion.

Q. But the relation between the dossier and the file is between the cover and the material inside? A. I should say so, yes.

Q. And an account book—they have a third category, 30 account books in Chemie and 110 in Sturzenegger, and an account book is a corporate ledger? A. Yes.

Q. It is something like an accountant would use, with a binding and lots of pages, lined, as bookkeepers line their pages? A. Yes.

* * * *

6658 Q. How often were you in touch with these investigators? Did you sit with them for hours, days, minutes? Did they drop in and talk to you every now and then? A. May I ask you, Mr. Schwartz, are you referring to the first or second investigation?

Q. If you would like to make a distinction, please do. Take the first. A. Well, the first—

* * *

6661 Q. That is the question, Mr. Sturzenegger. And let's confine it to the first investigation. A. Yes.

Q. How often were you in touch with them? Did you speak with them for long periods, short periods, or a short time? A. It was quite different. I think first when these gentlemen dropped in they required—requested—that all material, all documents available, should be shown to them. Then they began to read, and they picked up that, asked for more. And sometimes they asked mostly Mr. Germann, of course, in the building of I. G. Chemie. Then if there were other questions pertaining more to Sturzenegger-Greutert or, say, pertaining to the minutes of the board meeting of I. G. Chemie, or questions where I possibly could be involved, then they asked me. So, it was quite different. It was not—may be that one day I sat two hours with them to discuss, to answer their questions or bring additional documents. Then another day elapsed and nothing like that happened. Another day was just five minutes. So, you see—

Q. I see. A. Just to give you a general idea how this first

6662 investigation was.

Q. So, if they wanted to talk to Mr. Germann, he was on the premises, and you were around the corner? A. Yes.

Q. Then they came to see you. If they wanted documents from the files of Chemie, did they help themselves, or did Mr. Germann find them for them? A. That was, according to my recollection, done both ways. They had, of course, access to all the files. The first thing was to show them wherever documents could be found, wherever something was, and then they sometimes asked that they pick up this and that. And as they went through they came upon a special question, they asked, if they didn't find it themselves, for other files. So, like that.

Q. So, staying with the June investigation, I think you said somebody brought them documents, or they would want somebody to bring them documents. Did you find any documents for them that they had difficulty finding themselves? A. No. But I remember, for instance, that, just as an example. Just files pertaining more to the relation of Greufert-Sturzenegger also came up, and more personal things which just referred to my position in Greutert. They wanted to clear up these records, of course, where more concentrated in my firm. And so they referred to that, you see.

Q. So they might ask you for those records?

6663 A. Yes.

Q. And you might produce them? A. Yes.

Q. I see. Well, now, does the thing change in the November 1945-February 1946 investigation? A. Yes.

Q. That, of course, was a much longer investigation? A. Much longer, and there were more gentlemen coming and it was more thoroughly done. By this statement I won't say that the first was not a thorough investigation, but they went more into details, and especially with Greutert-Sturzenegger. There were constantly, I think, two or more gentlemen sitting, and they went into everything they found, and whatever seemed of relevance to them they were taking notes from. And, as you have seen from the records, there were many, many documents.

On this occasion I would like to mention that I have seen that that translation is not correct. It is referred there to fifty or more thousand "Dokumente." That is translated by "files," which isn't correct, because the Document mustn't be necessarily a file. That can be just a copy of a letter, original letter.

Q. I thought I made that clear to you. A dossier is a collection of documents. A. I see; yes.

6664 Q. And the word that was translated as "files" could mean one piece of paper. A. Then it's all right.

Q. You even added that it might mean three pieces of paper if they were clipped together. A. That's all right then.

Q. We have that very clear. The "dossier" means collection or group which is somehow fastened together. A. That's right.

Q. And the word translated as "files" meant generally one piece. A. Yes. And I may add that on this second investigation, of course, I had more contact, because they went more into details very often. They asked me very often. I should say daily. Or at least very often. And sometimes a long time then. Sometimes they just asked the bookkeeper or the man in charge of these special things. If it was a question of stock or such things. Well, that was a very thorough investigation, and from the beginning it was carried on in a way which was much like "house search,"—or what is that?

Q. House search, you mean? A. That means to say the gentleman was out—

MR. WILSON: Confined by it?

THE WITNESS: Yes. And not—They just dropped in.

MR. WILSON: Surprise visit?

6665 THE WITNESS: Yes. And, well, went through everything, every drawer, every deposit box, let us show the whole house, and they went through and they put seals on it, and all those under their supervision.

By Mr. Schwartz:

Q. You mean they, so to speak, sealed the contents of the drawers and books? A. Not the books but the drawers.

Q. Drawers? A. Drawers and safety deposit box.

Q. And only they could open them to examine the contents? A. Yes—to make sure that nothing could disappear afterwards.

Q. I see. A. And then they took the files and all that themselves and went through it and took the pieces that they thought to be relevant in this matter and studied it more precisely and then asked me or the other gentlemen questions.

Q. So there was no necessity to give them specific documents? They took possession of all the documents at once? A. They took possession; yes. Yes. Maybe if they just—because of course, there was quite a heap of these documents—didn't find first, for the first moment, what

6666 they were looking after, then they perhaps put a question: "Where are the other dossiers in this connection?" And so, of course, we could help them. But they had the whole under their supervision and in their possession.

Q. And they mentioned that they took 2500 documents back to their superiors. My translation says—A. Is it mentioned there?

Q. Yes. I will give you the German. I think we ought to keep the German on the table in front of you, Mr. Sturzenegger, so that we won't depend on our recollection, and you can turn to it any time you like.

Mr. Wilson: Mr. Schwartz, excuse me. I can be wrong about this, but do I understand that the investigators' report which you have marked as Exhibit B in this particular file was the result of the—well, strike it. I see it for myself. I see it is both July and November.

Mr. Schwartz: The dates are up in the first paragraph.

Mr. Wilson: That's right.

By Mr. Schwartz:

Q. Do you have the beginning of the investigators' report? That may be the main memorandum, but the investigators' report begins here (indicating). I think we will separate these two things. This is a duplicate copy here. I will mark this, and then I will mark the investigators' report "I.R." They mention on page 2 of the original they
6667 took 2500 documents. A. I see. Well, and what's your question, Mr. Schwartz?

Q. My translation says, "The most essential documents were submitted by the investigators to the SCO in the original" A. Yes.

Q. Does that mean they took the very document and took it away? A. Yes, it means that.

Q. Did they have any occasion to use the photostatic machine that you have on the premises? A. I don't think so.

Q. They took the original documents? A. I think so.

Q. Because they—A. By that they meant the original document.

Q. And, of course,—how long were these documents gone? A. How long they were in the possession of—?

Q. Yes. A. That depends. Part of the documents were sent back soon after the investigation. Part was withheld. Others were requested and asked for afterwards. So it was quite different.

Q. I understand. Are they all back now? Do you know?
6668 A. According to my recollection, all. Anyhow, the greatest part.

Q. And do you remember how this 2500 was divided between the papers that came from Sturzenegger and the papers that came from Chemie? A. No, that I don't recollect.

Q. Do you know anything of the proportion? A. Of the proportion? No.

Q. A greater amount from Chemie or lesser amount from

Chemie, whichever it might be? A. I wouldn't venture to say anything about that.

* * *

6685 Q. Did I ask you, Mr. Sturzenegger, about the physical arrangement of the firm Sturzenegger—the house? Or did we discuss it? A. No, you just confined it—

Q. —to the suite that Chemie occupies? A. That's right.

Q. May I ask you the same series of questions about your suite so you can answer it? A. Yes, with pleasure.

Q. You know, the first floor, and so on. A. Yes. From when? Do you fix a time for this description?

Q. The present. A. Well, I have given you a short scheme how it's situated as to the street.

Q. Yes, you have. A. It is an individual building. And on the first floor—by "first floor" you mean in the United States the floor that is—

Q. The ground. A. —on the same level? that is the ground floor?

6686 Q. Yes. A. You would find the bookkeeping rooms for normal bookkeeping. You would find the secretary of the bookkeeper. You would find further the cashier and his assistant. You would find two smaller rooms annexed, one where the chief bookkeeper and Prokurist works if he has to, say, do his special job of preparing the balance sheet, or things which are not just current business. And the other one which now is taken over by the Industriebank which, as you know, has its domicile in Basle and in our building.

Q. All this is on the first floor, the ground floor? A. All this on the first floor, because Mr. Wilson who knows it too can correct me if he thinks that I am incorrect. Well, that's on the first floor.

And then we go down and below the first floor there are cellars. All these—how do you call it—cellars?

Q. That's right. A. And there are drawers for old material, old files and so on which are no longer used, or archives. All that. That was all shown to the SCO people, and they

searched thoroughly. And then there is especially the safe deposit box room.

Q. The safe? A. Safe deposit, yes. That is,—Well, there are the bonds and shares we held for our own account or for the

6687 account of customers in safe custody.

Q. All that kept in the safe? A. That is in the normal safe. Then let's go up to the second floor. There is my own room. Then there is another room where Mr. Mollwo as long as he worked in the firm, together with my predecessor Mr. Greutert, were in, and which is now occupied only occasionally if I have discussions, if clients come, and so on. And then there is a large room adjoining which is especially reserved for meetings. We call it "Sitzungszimmer."

Q. That would mean "conference room"? A. Conference room. That's it. Then adjoining is a room where the man who is in charge of the Sekretariatsakten. That means all these matters which are used, which may be used, which are not down in the cellar but are more recent, or some are of greater importance, which are kept and supervised and handled.

And then there is on the second floor too my secretary nearby. I think that's all. Well, in the other room I mentioned before, off the Sekretariat room, there is a little room that sometimes is occupied by an assistant who helps him or is working in bookkeeping also.

On the second floor we have the telephonzentrale.

Q. On the second floor? Now do you mean the floor on which you are?

6688 A. No. In English it would be the third.

Q. The very top floor? A. To your conception it would be the third.

Q. Third? A. Yes. Well, there is especially the chief of the department which is occupied with the stock exchange. Borsenabteilung. And there the books also are kept and handled which are connected with the daily stock exchange

business and the carrying through of the orders given by the customers; and so on. There are some assistants to the man in charge. The man in charge is Mr. Sutter.

Q. Mr. who? A. Mr. Sutter. S-u-t-t-e-r. One of the old Prokurists. And there are two adjoining rooms which are occupied by assistants which have to do with coupon control and all these things which are in some way connected with the securities department. There is then another room on the third floor occupied by a secretary—secretary for this Mr. Sutter. And a fourth room which is used for technical purposes, as binding books or just such things, or if you have to issue circular letters, or so, you see.

Q. With machines? A. Machines, and so on. Then there is still a further room which is not occupied.

Q. That is very helpful. You mentioned the cellars,—

6689 A. Yes

Q. And you remember that in describing the Chemie building you did not mention cellars. Do they have none? A. They have, but not of this size we have, and they do not have such a specific compartment for the safe deposit boxes that is with us.

Q. Does Chemie have a safe deposit box? A. Not in their own building. They may have just—no, but they haven't got this specific instrument as we have.

Q. That's right. Isn't it so that Chemie's securities are physically kept with your firm? A. Yes. Mostly. Maybe they have part of it with Chemie themselves, but they were mostly kept with us.

Q. Are other things that would have to be locked up kept with your firm? You mentioned Vertrag files and such things as power of attorney. After all, there are documents other than security shares that have to be locked up. Are such documents of Chemie also kept with you? A. Well, maybe unissued shares, for instance, if they had to print them or reprint them; and such documents perhaps in addition. But normally the files, all the files, of I. G. Chemie, or all of the

contract files are kept normally with I. G. Chemie. Only the securities or so are—they are better in safe custody—are kept with us as a banking
6690 institution, which seems natural.

Q. You mentioned the people on the top floor who have constant business with the stock exchange. A. Yes.

Q. The people in your firm, on behalf of customers and yourself. A. Yes.

Q. Then from that I would suppose that—am I right in inferring—that your firm does a good deal of business such as in this country would be done by a broker? A. Yes, that's right.

Q. You buy and sell securities on commission or order? A. Yes, we do that.

Q. And you don't, of course, correspond to anything like a bank such as the one across the street that has a lot of tellers and cashiers and people—A. No, because as you know, we are a relatively small institution, private bank, with not many—with not very much current business. It can not be compared to a large bank.

Q. You don't have the savings deposits as such? A. No, not normally. I should say under "savings accounts" you mean specific small accounts in great number?

Q. People's life savings. 1,000 or 5,000 or 10,000 or 50,000 francs.
6691 A. No.

Q. They don't deposit their small savings? A. No. That is not the business of so-called private banks in Switzerland.

Q. You were saying you do not have many—and then you say you do not have something else. Were your saying you do not have many clients in the sense a bank does? A. We have not so much current business, for instance, to one of the big banks. There isn't a swarming of people who just want to change some dollars, some francs, some Belgian money, and so on. We do not have much of such a business. That is more in the line of the big banks.

Q. You can't keep somebody from coming in and asking your cashier to change it, but that is not your business? A. No.

Q. And you don't accept deposits from private Swiss citizens who—A. We accept, of course, deposits, but not in that saving account amounts. We are glad if somebody comes and says, "Well, I'd like to invest 100,000 francs in open account and carry on business with you." And, of course, after having—well, having made the necessary inquiries, if the person is reliable and acceptable, then we would be glad to open such an account, you see.

6692 Q. And that account is really for purposes of investment? It is designed that something shall be bought with the money? A. Now, it could be also a credit. It could be the contrary. A person or company could put us the question: "Well, we are in need of cash. Would you be prepared to grant us a loan against collateral?" And then after that, that would perfectly come within the line of our normal business.

Q. Yes. That is an action by you. A. Yes.

Q. But your customers who make deposits, do they typically—are they planned merely to draw interest? Or— A. No, not so much that, because the interest normally paid by Swiss banks, as in all countries of the world, is negligible.

Q. They plan to do something with the money? A. Mostly.

Q. For their own benefit, or do you use the money and pay them a proportion? I don't quite understand. If I were the reliable person who came to you with 500,000 Swiss francs, what does that typical customer want of his 500,000 Swiss francs? Does he want you to invest—to use your judgment to invest the money so that his money shall double? or merely—A. Well, that will depend from the circumstances.

6693 Normally a man who has at his disposal such an amount, and he has not yet a good connection with the bank, has his own ideas how to handle the things. Perhaps he will ask for confirmation of his ideas, or so, you see. I

think it is impossible to say what is the typical attitude of a client in such a case, because that will depend on the circumstances entirely.

Q. But your clients, then, are people of substance? They are not just people with a few hundred or a few thousand? A. Yes. No, the people who have this little booklet, not them, because that is much more the business of some specialized institutions, especially the Kantonalbanken—the state-guaranteed banks.

Q. And you rely on not quantity but quality in your customers? A. Yes. We should prefer that.

Q. Have you ever totalled up how many clients you had at one time? A. Oh, not such an enormous number.

Q. Well, how many do you have today of these people of substance? A. I have not counted them together, but maybe it depends—it is not a very large number perhaps.

Q. About? A. About one, two dozen.

6694 Q. I suppose that is the fortunes of the war? At one time there were probably more? A. Yes, there were more, no doubt.

Q. When Farben was a client did you think of them as one client or as a whole group of clients that came because they were affiliates and subsidiary companies? A. That is not easy to answer that. Farben itself was perhaps one client. But there were accounts with subsidiaries or with I. G. Farben-connected firms, and then those would be different clients.

Q. I see. Well, when was the largest period? Let's pick a time, whether it be 1938 or 1942 or 1935, when your business was at its height. When would you say that your business was at its height, both in volume and in number of clients? A. That is difficult to just contemplate it in such a way, because you know I have entered the firm in 1931, and what happened before it is not my personal knowledge but, of course, I have a knowledge because—

Q. You have been there. A. I have been there.

Q. Pick a date. A. I should say after what has been told me and my knowledge of the files afterward, but not of direct personal knowledge, that the time of the greatest business volume was

6695 before I entered the firm.

Q. In the late '20's? A. In the latter part of the '20's. Between then it was, as you realize, the time when these ideas about possible foundation of I. G. Chemie and all that—preparations were made. And then, of course, there was very substantial business.

Q. And how many clients in terms of different companies might there have been then? A. At this period before I entered the firm?

Q. Yes. A. You are speaking of companies or of individuals, or both?

Q. Both. A. Both?

Q. Yes. A. Well, the number of companies I suppose was not so great. There was Metallgesellschaft, of course; I. G. Farben; its related companies— I. G. Farben-connected. Scheideanstalt. Then, of course, the banking connections we had everywhere—England, United States, France, and all everywhere. And individuals, of course, I think that— it's just—it's not my direct knowledge; I emphasize that again—there were people of I. G. Farben, stockholders or individuals who were in the later years forced by the German

6696 currency prescriptions to withdraw their accounts, to close them and transfer their funds to Germany, and so on. But I might say, if I am not mistaken, that the largest business volume was then in those times.

Q. And how many clients might there have been then? These companies and these individuals? 20, 40, 50, 100? A. There may be perhaps—perhaps 50 individuals and companies. But please accept it as—

Q. I understand. A.—just pure guessing.

Q. I understand. A. And a judgment which is not based on knowledge.

Q. I understand. But you had more personal knowledge during the '30's. And did that number of 50 decline during the '30's? I think you really said it did. A. Yes.

Q. The individuals left? A. Yes.

Q. So the peak of clients might have been 50 in the late '20's, and they are now the figure you gave a little while ago. I don't mean to suggest that they have constantly declined, but the peak may have been 50. A. Yes.

Q. And the low point is at present? Is that about right?

6697 A. Well, the present is perhaps not quite right, but anyhow the number declined. There is no doubt.

Q. You mean that the number has in the past been less than it is now? What was the number of clients, say in 1943, just to give a typical war year, let's say? A. Well, I can not be exact, but I suppose it would be along the line I told you about.

Q. I see. A. 20, 30 corporations and individuals altogether.

Q. We will pick a year 1943. And you said the number might be along the lines of—? A. Of what I told you before. 20, 30, or something.

Q. 20 or 30? A. Yes. Something like that. Near that.

Q. To return to the building for a moment,—A. Yes.

Q. —am I right in thinking that until a cerfain point both Chemie and Greutert occupied what is now the Greutert building? A. That's right.

Q. I see. Until about 1920-what? A. No, I think until the '30's.

Q. Until the '30's? A. Yes.

Q. About early in the '30's? We have the date some-

6698 where but—A. About I should say maybe 1935 or 1934. Something like that.

Q. Until the middle '30's? A. Yes, I guess so.

Q. Chemie occupied the St. Jakobstrasse building that

now Greutert has? A. Yes. But I think we could make out the exact date.

Q. Sure. I just wanted to get a rough version now. A. Yes. If you want to be precise.

Q. You mentioned that Industriebank has a room in the Greutert building? A. That's right.

Q. Does it have a permanent employee who is in charge of its affairs, or is it served by your people? A. Well, it has a permanent employee, and that is a Mr. Bischof.

Q. And he devotes himself to nothing but the affairs of Industriebank? A. No, that couldn't be said. But he was working in the Sopadep, this other company, but he is a Prokurist as is seen from the register of commerce of the Industriebank; so there is not much current business in Industriebank.

Q. Naturally. He is an officer of Industriebank and
6699 he devotes himself to Sopadep and also, I suppose, to the firm of Greutert if need arises or if he is not very busy? A. Yes, if need arises.

Q. He is actually paid his salary by Industriebank? A. Industriebank and Sopadep.

Q. He is paid share and share between the two? A. Yes; some arrangement.

* * *

6716 Q. I have here a statement, Mr. Sturzenegger— it is not the text of the Swiss Commercial Directory; It is my own researchers' statement that the 1944 Swiss Commercial Directory listed the following as officers of the Stickstoff— A. Uh-huh.

Q. —managing board: Hermann Schmitz, president— A. '44, was it?

Q. Yes, it says '44. Mind you, I can't be sure of this. Carlo Mollwo, Andre Jeannot—A. Yes, that was the name I referred to, that is residing at Neuchatel, a French name.

Q. Does this recall to you Jeannot? A. Yes. I tried to recall it myself, but that is Mr. Jeannot.

Q. And does it recall to you that Hermann Schmitz was the president in 1944? A. I suppose he was still.

Q. And this says that director—I suppose that is a
6717 translation of "Direktion"—was Hans Haller. A. Yes, that's right.

Q. And that the Prokurist was Basil Werder. A. Yes. I said to you that some of my people had authority to sign for convenience.

Q. Now, Hans Haller is—he is with you and with Chemie, or he was at that time? A. He was. He was with me until he died, and formerly he was—in the earlier time, in the earlier period, he was at the same time, especially, I think, during the time when both companies were in the same premises, he was also Procurist.

Q. For Chemie? A. For Chemie, yes.

Q. And when the two companies separated and one went around the corner—A. I should say soon afterwards, about this time—

Q. —he remained only with— A. He remained only—

Q. —with you? A. Yes.

* * *

6754 Q. I see. The thought didn't occur to you that you might be called upon to answer questions that would involve the banking secret laws? A. No, because I thought the relevant questions that would be put before me would all pertain to the Sturzenegger-I. G. Chemie complex, and these companies, of course, which you know from the report and which are in some way or other involved in this matter. But I didn't think that your questions would just go as far as towards some client.

6755 Q. What is the distinction? You have answered questions about Sopadep and Perpetua and Grutchemie and some others. A. Yes.

Q. They are your clients. A. Well, but—

Q. And you have files on them. The bank secrecy didn't bother you then. Why does it bother you on the Stiftungs?

A. Well, there might perhaps be two things mentioned. One point is that that is already within your knowledge from these reports.

Q. You are telling us only what we already know? A. Yes. These things are, I think, in connection of these corporations you mentioned before.

Q. Well, if we asked you about a fact about Perpetua or Sopadep that we didn't know, would you claim a privilege on that because they were a client? A. No, I wouldn't claim. I wouldn't claim because I see here a difference. These are not individuals like just a normal client of my firm, but—

Q. All right, I'll take it on that basis. If we asked you about the account of Carlo Mollwo, with your firm, would you claim a privilege? A. I should do it, yes, until having made—having cleared my position under the law, don't you think?

MR. WILSON: I think we would have to until we settle
6756 the question.

By MR. SCHWARTZ:

Q. If I asked you about an account of Hermann Schmitz with your firm, would you claim a privilege? A. In order to maintain the line, I should do it.

Q. And an account of I. G. Farbenindustrie with your firm. Would you claim a privilege? A. I think I should do it.

Q. You would? A. Until I have inquired further and made sure that maybe I am entitled to disclose that, you see.

Q. Perhaps you can help me as to why you did not claim the privilege when we asked you questions about Perpetua and Sopadep and Stickstoff. They are banking clients of yours. A. Now you mention Perpetua. Well, I might say that this company is closely connected with my firm, no doubt.

Q. But they are a client. A. Well, but we have stock participation and they are in such a way connected with the firm that it is not the same character as just an outside client.

Q. You feel that with Perpetua, your firm owns Perpetua and so you have a right to give up the privilege?

Mr. Wilson: Let me interpose a suggestion, Mr. Schwartz. I think this is largely a legal question. As I see the situation, and despite your indication some time ago that you

6757 didn't believe what I was saying by, "Yes, yes," at the end of something I said, in this connection the disposition to claim a privilege is a purely legal question.

Now, Mr. Sturzenegger has at least two capacities in which you are interested. One is as a member of the board of I. G. Chemie; the other is as a banker, as an unlimited partner of Sturzenegger and Company. I think if he has knowledge of Perpetua, of Sopadep, of Rigidor, which he has gotten in his capacity as a director of Chemie, he is entirely consistent with his privilege.

Mr. Schwartz: He has been stating the contrary.

Mr. Wilson: I am going further than that.

Now, he has extended himself, as a banker, with respect to whatever knowledge he has gotten from this intimate group of corporations.

Mr. Schwartz: How about Stickstoff, in which his knowledge can only come as a result of his banking capacity?

Mr. Wilson: Let me tell you why that isn't so, and that is what prompted me to let the question be answered, why I think it is relevant to this inquiry anyway. You called attention to the fact that Chemie is a shareholder in Stickstoff. Undoubtedly, that is an opener for inquiries.

Mr. Schwartz: He had answered questions about Stickstoff before I pointed that out.

Mr. Wilson: I know, but I had before me the same page. I

6758 knew where the relevancy lay before you mentioned it. I have done a little work on this case myself.

Mr. Schwartz: But he answered the questions before I pointed out—

MR. WILSON: I am saying I raised the privilege here today in the first instance myself, not Mr. Sturzenegger.

MR. SCHWARTZ: I wonder what the record will show on that.

MR. WILSON: Well, all right. Of course, we don't care what the record shows on that, as far as that is concerned.

MR. SCHWARTZ: I am very interested in the record because I am sure it will show an entirely inconsistent course. Mr. Sturzenegger has been willing to tell us certain things, and he said he told them to us because we already knew them, or because they were intimately involved with the case. Both of those things are improper. If we already know them, that shouldn't bear on whether he claims the privilege. If they are intimately involved in the case, he can't be the judge of how intimately they are involved with the case.

MR. WILSON: Now there is a simple answer to both of those things. Because of his use of English, it is obvious to me that when he uses a phrase, "Because you already knew them," he means because they were already disclosed as public information. That is the reason his repetition of that information would not be original disclosure. That is a very simple way to understand this gentleman, but you are not disposed so to

6759 understand him.

Now, with respect to the second feature, the question that is involved in the case or not involved in the case, that is a question of law for a practicing lawyer, as I claim to be, and I say let there be an inconsistency between his position on Sopadep, Rigidor, Industriebank and Stickstoff for that matter, if you claim so, I don't concede the inconsistency there. Let there be an inconsistency there. We are going to make those disclosures without claiming the privilege, run whatever risk rises from it.

But with respect to these private banking transactions which we personally regard as involving us in questions of liability and violation of Swiss law, we are not going to

disclose them until we are compelled by a court to disclose them.

* * *

6763 MR. SCHWARTZ: Have you any further statements you care to make on the questions we were discussing yesterday of the scope of the privilege that the witness might claim, Mr. Wilson?

MR. WILSON: Yes. Well, I don't know that it is a further statement, Mr. Schwartz. We have thought about the situation, and we feel that the privilege must be claimed until we are ordered to the contrary. I am seeking some definite Swiss law upon the subject. And our formula will be something like this:

The privilege, as we said yesterday, will not be claimed with respect to the Basle Circle, so-called, whose definition I can not give you at the moment but which will include such things as Sopadep, Industriebank, Rigidor, Perpetua, and, as I see it, individuals as well within that Circle, subject to my not having canvassed all of them.

6764 For example, our position with regard to Mr. Mollwo yesterday; we will withdraw that position. We think even if we have a privilege that we should not claim it in that instance, and that there is a kind of a reason justifying our not claiming it. We would feel the same way with respect to Farben. And I can't draw the circle too closely with regard to individuals of Farben, but at least you will understand that until and unless I do raise an objection that the Farben group will not be included within the claim of privilege.

As far as the Stickstoff situation is concerned, as I have canvassed the situation, there are two phases, two facets of the relationship there. One is banking in character, and the other is by virtue of Chemie being a shareholder in the same corporation. I think that we will make the distinction there wherever it exists. In other words, if Mr. Sturzenegger has information at hand which he can readily think that he has gotten through his Chemie connection, it is at

your disposal. Any phase of it that upon exploration would be regarded by him or me as a part of the banking secrecy, we will claim it with respect to that.

Now, that is as clearly as I can state it this morning. I mean it when I say to you that this is a technical situation where it is thought that for professional reasons protection must be had. If it should develop that the

6765 privilege does not go this far, then we think the court should tell us so upon a proper presentation of the matter.

That is a sort of a guidepost. We may have individual problems when they arise, but that is my general view on the subject of claiming of privilege.

MR. SCHWARTZ: Before discussing it generally, can I give you some illustrations and see how far you will voluntarily waive the privilege?

MR. WILSON: Yes.

MR. SCHWARTZ: For Hermann Schmitz and his dealings with Greutert and Chemie is the privilege waived for all such matters, or do you distinguish between the banking secret and non-banking secret matters?

MR. WILSON: I would like to say that as a general principle no privilege will be claimed. I say that only to have a possible reservation of something I can't anticipate,—

MR. SCHWARTZ: Well for instance,—

MR. WILSON: —that I would like to discuss.

MR. SCHWARTZ: For instance, Hermann Schmitz's deposits in his name with the firm of Greutert would, I assume, be in the course of the relationship of banker and client, or that you might so claim it.

MR. WILSON: Yes.

MR. SCHWARTZ: Would you claim—

6766 MR. WILSON: I said, "Yes." We will not claim it.

MR. SCHWARTZ: I think I understand that.

MR. WILSON: Let me say this: We will not claim it as a general proposition. If some peculiar angle comes up that I can't think of, I would like a kind of reservation.

MR. SCHWARTZ: That helps me to kind of understand what you mean, and we can not know until the question is asked whether you will claim the privilege or not?

MR. WILSON: The likelihood is very definitely "no."

MR. SCHWARTZ: But that is only because Hermann Schmitz is obviously a man of Farben. But as we got to people whom you might not regard so clearly as men of Farben, I suppose you would say the likelihood of claiming the privilege would increase?

MR. WILSON: Well, if they are men of whom I have knowledge or of whom Mr. Sturzenegger would have knowledge. And, presumably, he would know more names than I would, although I believe I know a great many of them. I would like to evaluate each situation.

For example, if a question arose as it did yesterday in Stickstoff. With regard to the identity of the shareholders of Stickstoff, I was aware, as I said to you, before you got to it, that Chemie was a shareholder in Stickstoff. I therefore assumed, logically or otherwise, that the names of other shareholders might have been available through the

6767 Chemie medium. Therefore, no claim was made with respect to that information.

And I have got to try to reason that out as you may name people who move from the center of the circle—if you know what I am trying to say.

MR. SCHWARTZ: Well, then, I can see that we will have to have a decision from the court. And can we agree that when we have explored the limits of your waiver by questions to the extent so the issue can be drawn, we will move and get to the court as soon as we can?

MR. WILSON: That's right.

MR. SCHWARTZ: Perhaps on that preliminary calendar that is open to people who have matters they need to be settled before they can proceed?

MR. WILSON: Sure. In other words, you can assemble as many of these as you regard as important, and I hope by

that time to be advised definitely upon the Swiss law. And maybe those things will occur simultaneously and we both can go in on the question.

MR. SCHWARTZ: All right.

Do you have any further views on the witness' willingness to refresh himself with the documents and produce them for inspection?

MR. WILSON: Yes. I say "further" views. I would like to restate somewhat the indications that I have heretofore

6768 given. As a general idea, our position will be that if it is a matter that can not be ascertained except by contact with Switzerland, we would decline to make the search, as a general proposition. If they are things that we can readily assemble ourselves here, we want to give you as much cooperation there as we reasonably can.

MR. SCHWARTZ: Do you have records of I. G. Chemie here?

MR. WILSON: No, we don't have records of I. G. Chemie here. I have some information of my own here from which I can make inquiries. But it is just data in my own files as to whether—well, for example, your question about when Chemie moved from St. Jakobstrasse. I think I can dig a thing like that out of my own files. But, that is the kind of thing that I have in mind.

MR. SCHWARTZ: I have a distinct impression from our appearance before Judge Laws on the motion to take depositions that both you and I gave the Judge to understand that we would have adjournments, if necessary, to permit the witness to refresh himself with his documents, and that the documents could be brought over, and that there would be no such sharp division between the witness here and his documents at home.

MR. WILSON: Well, the record is stenographically reported on that point. I haven't read it since our discussion of yesterday, but I do—

6769 MR. SCHWARTZ: Nor have I.

MR. WILSON: — I do remember one point. The

court interposed in my discussion of this very point that part of the deposition might be taken here and adjournment had to Switzerland for the conclusion. There was no decision about that point, but I have a very distinct recollection that the court recognized the desirability of adjourning to Switzerland for data which might not be available here.

MR. SCHWARTZ: I doubt that since the court seemed to be disposed not to send us to Switzerland at all. But I also have a recollection that you appreciated an offer or a suggestion that there would be adjournment for the purpose of bringing documents here. But, as you say, it is stenographically recorded and there is no point in discussing it.

Let me ask you another question or two about the scope of your intention to claim the privilege, and I will just call attention to these groups of names. On page 21 of the investigators' report, running over to page 22, is a list of persons interviewed in connection with the investigation of Chemie and Sturzenegger. I would like to ask you, Mr. Wilson—you needn't answer right now—whether all those persons will be waived to the extent that you would waive, say, Carlo Mollwo and Hermann Schmitz.

MR. WILSON: Let me see that, Mr. Schwartz.

Mr. Strurzenegger, may I read these names aloud so you

6770 may at the same time recognize them?

MR. SCHWARTZ: Perhaps he can have the German text.

MR. WILSON: All right.

MR. SCHWARTZ: One moment, please.

MR. WILSON: With respect to Dr. Iselin, he is a lawyer, and if there are banking transactions with him in his capacity as a lawyer for other clients, we might have some problem there. I mention that only hypothetically. I don't know whether it could arise or not.

MR. SCHWARTZ: Transactions personal with him, waiver on those?

MR. WILSON: As a general proposition, yes. Isn't that your idea, Mr. Sturzenegger, with respect to him?

THE WITNESS: I should say so.

MR. WILSON: Mr. Sturzenegger, of course, yes.

Mollwo; we have declared our position concerning Mollwo.

Dr. Gadow; the answer is the same.

Dr. Henggeler must present a question individually as it arises. He was counsel for the corporation on numerous occasions. He is a general practitioner, an independent practitioner in Switzerland. I am sure I can't answer that in any respect at the outset.

Dr. DuBois; as I recall it, he was in some of the circle here.

THE WITNESS: Yes.

6771 MR. WILSON: I should say as a general matter Dr. DuBois was in a category somewhat similar to Mollwo.

THE WITNESS: I should say yes. You realize he's dead.

MR. WILSON: Yes, I realize he's dead, but that kind of question I don't think will arise.

Germann, of course, yes.

Hans Haller; I should say yes.

To Sutter I should say yes.

Werder I should say yes.

Dr. Wolfensperger; I should say yes.

Mr. Bischoff; I should say yes.

Do you agree with those (addressing Mr. Sturzenegger)?

THE WITNESS: Yes. By saying "yes,"—

MR. WILSON: As a general proposition we invite Mr. Schwartz to make inquiries until we might make specific reservations if and when the question arises.

MR. SCHWARTZ: I see. Then I am not being helped very much. All these people are still subject to qualification when a question is asked? You may claim the privilege?

MR. WILSON: Let me be a little better about that, Mr. Schwartz. I can't think of any reason now with respect to those as to whom I said "yes" that I would make a reservation. I would like you to proceed on the theory that you

have more or less carte blanche, as far as I am concerned, in those situations. If there are reservations, they
6772 should be infrequent or not at all.

Mr. Brumm; I should say yes.

We have declared ourselves on Hermann Schmitz.

Mr. August Germann; I should say yes.

Mr. Greutert; yes.

Mr. Roesch; yes.

Messrs. Euler and Merton; I would say yes.

Dr. Thormann; I should say yes, since he was a director of Chemie.

Would you concur in those observations, Mr. Sturzenegger?

THE WITNESS: No, no; I think that is all right, sir. I agree.

MR. SCHWARTZ: Now, beyond that there is a list of safes, but it does mention six individual names. Of those I think all but Dr. Schudel—two Dr. Schudels—you have already covered by the first list. How about the two Dr. Schudels?

MR. WILSON: Let me see about one of these. I know one of the Schudels is connected with Osmon. This brother of Dr. Schudel, Schaffhausen, who appeared in connection with Osmon—I am not aware, frankly, of the status of Mr. G. Schudel.

MR. SCHWARTZ: Is he a director of any—

THE WITNESS: I do not—I know only one Dr. Schudel. Therefore, you may have a brother of him, but I don't know
6773 him personally. I just know this Dr. Schudel of Schaffhausen, who is a member of the board of Osmon.

MR. WILSON: I didn't know of him either.

MR. SCHWARTZ: Let me ask a question of the witness then.

By MR. SCHWARTZ:

Q. Can you tell us why the safe of Dr. Schudel of Zurich might have been thought relevant? The contents of his safe might have been thought relevant to this investigation by

the SCO? A. I do not know. I remember that we were informed afterwards that this safe too was opened, and it only, in my opinion, shows how far the investigations went in trying to disclose any facts they could avail themselves of.

Q. Why this safe, against the brother of anybody else on this list, or the relative of anybody else on this list? Have you any idea? A. I have no idea about that. May be that Dr. Schudel, well, said he had a brother in Zurich, or that they asked him. I don't know what the story is, because I do not know personally this Schudel in Zurich.

MR. WILSON: Mr. Schwartz, may I ask you a question? Because, I am curious about this myself. Do you have any information on the existence of two Schudels?

MR. SCHWARTZ: I may. I certainly don't know at this
6774 moment. But clearly there are two. And the safe of one of them was opened.

MR. WILSON: Now, you didn't inquire about Neutra on that list.

MR. SCHWARTZ: Well, I understand the witness mentioned what Neutra was yesterday. It is an auditing firm that audits books of Chemie and your own firm (addressing the witness)?

THE WITNESS: That's right. And of my own firm.

By MR. SCHWARTZ:

Q. So certainly it would be within the power of Chemie or the firm of Sturzenegger to ask them to waive the privilege, and I should think that they would agree since they know things only from having looked at the books of Chemie and Greutert. A. To ask them, Mr. Schwartz, for the reasons?

Q. You do business with them? A. Sure.

Q. They are employees in a sense? A. In so far as—

Q. You pay them? A. —the yearly audit.

Q. You pay them to do their professional service? A. Yes. That's all right.

Q. So you certainly have the right to ask them to
6775 permit you to tell anything you know about that.
A. Uh huh. I—

MR. WILSON: Is accountancy privileged in Switzerland? I mean can an auditor—not an auditor employed by a corporation regularly, but an accountancy firm such as Neutra is, do they have a privilege in Switzerland against disclosure?

MR. SCHWARTZ: Let's distinguish, Mr. Wilson. I am not thinking at the moment that I would ask Mr. Sturzenegger to tell me something he has learned from Neutra about the affairs of Company X. I am thinking of matters connected with Chemie and Greutert, and I assume that Neutra learns about or has learned about Chemie and Greutert only from its inspection of your books.

MR. WILSON: Yes, I am aware of your inquiry, but I think mine is a piece of that same inquiry. In other words, I am thinking about this: Neutra might very well—I don't know—have audited, let's say, the Stiftungs. Neutra gets information about the Stiftungs.

MR. SCHWARTZ: If there is a privilege about Stiftungs for Neutra, the witness has no business knowing what Neutra knows. See?

MR. WILSON: Except that Neutra might know the same thing that the witness knows.

MR. SCHWARTZ: All right. Let's pass it. It doesn't help us.

6776 MR. WILSON: I will have to discuss with Mr. Sturzenegger off the record sometime what the accountancy situation is. We will pass Neutra for the time being.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. When we closed yesterday, Dr. Sturzenegger, we were on four Stiftungs whose location was in Basle, or one of them was in Chur. A. Yes.

Q. I would like to go down the list. You have the list in

front of you. I would like to go down the list for any other companies domiciled in Basle and ask you whether they are domiciled at your premises.

The next one is about six lines down. Petropol A. G. A. It is domiciled in Basle but not within the premises of my firm.

Q. Incidentally, I understood, didn't I, that you said that no companies other than Chemie are domiciled at the premises of Chemie? Is that right? If it's not quite right I will ask the question for each of these. A. No, to my knowledge there isn't any other in the premises.

Q. Let's assume that my question here relates to either Chemie or Greutert. A. I see.

6777 Q. Just for purposes of refreshment. A. That's all right.

Q. So, Petropol is, to your knowledge and recollection, not domiciled at either Chemie or Greutert? A. That's right.

Q. Prudentia-Stiftung, Basle, is the next one. A. That I am not sure at the moment. I don't think so.

Q. You don't think so, but you are not sure? A. That's right.

Q. The next one is Schweiz. Gesellschaft fur Metallwerte, Basle. A. No; certainly not.

Q. Then Technik & Finanz, Basle. A. That was domiciled but has been wound up.

Q. Has been what? A. Wound up; liquidated a couple of years ago.

Q. That was domiciled at your firm or at Chemie? A. To my recollection at my firm.

Q. And wound up about when? A. Wound up, well, I should say 1939 or in the early '40's.

Q. It has been a holder of shares either in G.A.F. or Chemie? I recollect one or the other or both. A. Yes, that's right.

6778 Q. And when it existed and during its existence, would you say that it was part of the Greutert Circle? A. I should say so.

Q. So it was owned— A. Yes.

Q. —not exactly as the others were owned? A. No.

Q. Each of them is owned differently? A. Yes.

Q. So I suppose the privilege would not be claimed for its affairs? A. No, I don't think so.

Q. Teerfarben A. G.? I am going to cover the list for domicile first; then we may cover it for other purposes. A. Yes.

Q. The next one is Treupha, Basle. A. I don't think that the address is right. The firm name is known to me, but I only recall a Treupha A. G. in Baden. That is near Zurich.

Q. The next one is—well, there seem to be no others on Basle. Let me just go down the list, and I am going to ask you whether the firms are close enough to Chemie and the Greutert Circle so that you would not claim the privilege. A. Uh huh.

6779 Q. If you have any difficulty figuring out whether you would claim it, why we will pass it and come back to it.

Agfa A. G., Zurich. Within the circle so that the privilege would not be claimed, or without? A. Well, let me put it this way: I recollect that I. G. Chemie once held shares of this company, but afterwards—years ago—they were sold to Swiss interested parties. And since this sale there is no longer any connection between them.

Q. And they are not clients of yours at the bank? A. May be that one of the shareholders is still. I do not precisely recollect.

Q. Is the firm a client? A. Not to my recollection: no.

Q. Then, Chemie's interest in Agfa—A. Has ceased.

Q. You would testify on that? A. It has ceased.

Q. Your knowledge of Agfa—you would certainly testify on that. But perhaps your knowledge of this one shareholder's activities that you learned from him as a client at your bank you would not? A. Would come within—

Q. Within the privilege?

6780 A. Within the discussed general line.

MR. WILSON: I think, Mr. Schwartz, that you now made clear to him what I wanted to. That is, as you asked this question he should have the mental process of determining whether it is a client of his banking house or not.

MR. SCHWARTZ: I want to draw the line so I will know where I can go and where the privilege will stop.

By MR. SCHWARTZ:

Q. The Bank fur Industrielle-Unternehmungen, Schaffhausen. A. That name doesn't seem anything (sic). I do not recollect it.

Q. So you couldn't say whether they are a client or not? A. They are surely not clients.

Q. Then you would not claim a privilege? A. I recollect a name many years back of so-called "Abanid," an abbreviation, which had perhaps a similar name. May be that it is just a mix-up.

Q. We can't settle that one. A. We can't settle that one.

MR. WILSON: Off the record.

(Discussion off the record.)

THE WITNESS: I might make clear I only recollect that because it struck me that this mentioned firm's name was

6781 or is in my recollection similar to the name here on the list. But, as I told you, we have no connection with such firm, but it may be just a mix-up with this old customer's name.

By MR. SCHWARTZ:

Q. Then Chemica A. G., Schaffhausen. A. What should I say about this company? We have nothing to do with it, and I do not recollect—maybe the company has been liquidated—except for the fact that as to my kflowledge one small company closely connected with my firm—that is Mithras A. G.—for a short period held certain shares of Chemica.

Q. Of Chemica? A. Of Chemica. Only a small minority, to my knowledge.

Q. Then, if the relationship is a stock relationship, your firm and Mithras, and Mithras and Chemica, it is not a bank secrecy relationship? A. Well, I do not recollect whether Chemica was too a customer. As to this stock participation, I have disclosed the fact I know.

Q. If they were a customer there would be that distinction? A. Yes. That's all right.

Q. What did Chemica do?

6782 A. No idea. I think they were a little holding company, but we had nothing to do with it except for the stockholding.

Q. Continentale-Linoleum-Union A. G., Zurich, the fourth one. A. Nothing to do with it. I do not even—well, I recall the name but it doesn't say to me anything in this connection.

Q. Then you would not be likely to feel that the privilege should be claimed for that one? A. No.

Q. Continentale Gesellschaft fur angewandte Elektrizitat, A. G. A. I do not recollect much. Maybe that we had some very small stock transaction with respect to this company, but I am not at all sure if I don't mix up the name with another company which perhaps has a similar name.

Q. I see. All right. Durand & Huguenin. I suppose Durand & Huguenin is like Agfa. Once owned by Chemie? Since been sold? A. That's right.

Q. The relationship of ownership you would testify to? A. Sure.

Q. There might, however, be some banking business—

A. Uh huh.

6783 Q. —that you had done? A. Uh huh.

Q. Do you remember? Are they a client? Do you think you may have done banking business with them? A. No, I do not recall it.

Q. Then, as far as you can tell, there would be no claim of privilege? A. I am quite prepared to do so—whatever I know.

Q. Fiduziar A. G., Schaffhausen. A. Oh, that is a company that in the '30's has been liquidated, I think.

Q. Would you say it was close enough to Greutert and Chemie to be regarded as part of the circle? A. I should perhaps say so, because the operations were largely handled, I think, by my predecessor's firm, and I believe to recollect that some large pension funds for I. G. Farben people went through this company.

Q. All right. So there would be no privilege claimed as to that one? A. No.

Q. Even though you had done the banking business for them? A. That's right.

Q. Grutchemie-Konsortium. We have understood already that you would not claim the privilege about that.

6784 A. Yes.

Q. Helico. Of which you are a member of the board? A. Yes.

Q. That is probably not at all important, but I would like to test the claim of privilege. If you knew anything about Helico as director of it, or as a business man in Basle, you would testify? A. Well, that—I myself would have not the slightest hesitation. It is only the question—and I would like to discuss it with my lawyer, what he thinks about it, because you know, you see, I am—

Q. A director? A. —on the board of directors.

Q. You would like to discuss with him whether a director has a privilege? A. Yes.

Q. All right. We will pass that one, and you can work it out.

Mr. Wilson: Yes. I will discuss it.

The Witness: Yes.

By Mr. Schwartz:

Q. Immobiliengesellschaft Maienburg A. G., Zurich. A. Well, it is in some way a customer, but I think we shouldn't avail ourselves of the privilege as this company is closely

connected with Mr. Wolfensperger, who himself
6785 belonged to the circle.

MR. WILSON: That would be my attitude about it.

By MR. SCHWARTZ:

Q. The next is Igesol-Konsortium, and, of course, on that one no privilege is claimed. Is that right? A. That's right.

Q. The next is Stickstoff, and we have discussed that already so we will pass it. A. Yes.

Q. The next is Immobiliar A. G., St. Jakob. And I suppose on that there is no privilege at all since it is very close to you. A. Sure.

Q. Industriebank. I am correct, am I not, no privilege at all? A. All right.

Q. Marja-Stiftung. And the next four Stiftungs we have discussed. A. Yes.

Q. Mithras. Am I correct? No privilege at all? A. No.

Q. Osmon. No privilege at all? A. No.

Q. We know a good bit about Osmon, some about Mithras —Mithras because it is substantially owned by the Greu-
tert
6786 firm.

A. Has been liquidated also, but was substantially owned by Greutert. Right.

Q. Parta, the subsidiary of Osmon. No privilege? Is that right? A. Yes.

Q. Oh, when I say "no privilege," I mean no privilege even as to banking matters. A. Uh huh. I should think so.

MR. WILSON: That's our understanding.

By MR. SCHWARTZ:

Q. Because that is the question you might claim a privilege on. A. Yes.

Q. Peak—P-e-a-k—Film, Zurich.

MR. WILSON: P-e-k-a.

MR. SCHWARTZ: What is the German?

I'm sorry. P-e-k-a.

THE WITNESS: If it's a client I should say privilege, but I do not recollect it is a client. But the information I can give at once: It is about all I know about it. That Osmon has granted, to my knowledge, a loan on a mortgage basis to this company in Zurich.

By MR. SCHWARTZ:

Q. Certainly as to that relationship no privilege. It
6787 might be a client and you might have to—

A. Yes.

Q. Perpetua A. G., Schaffhausen. I assume no privilege at all. A. No. I should only add that for precisety (sic) that is no longer Schaffhausen. It is Lucerne. That is the company I informed you day before yesterday about, which domicile has been transferred to Lucerne.

Q. That too is within the circle, so that it is close enough so that you would not claim a privilege? Isn't that right, sir? A. Which one?

Q. Perpetua. A. Perpetua? Yes. No exception.

Q. The next is Petropol. We discussed its domicile, but I would like to ask you about the claim of privilege. A. Yes, that is a customer.

Q. That is a customer? A. Yes.

Q. So you would claim the privilege to that extent? A. Yes.

Q. Is it also related to Chemie by stock or business connections at all? A. No.

Q. Is it related to you other than as a customer?
6788 A. No.

Q. Do you own stock in it? A. No.

Q. Purely a customer of yours? A. Yes.

Q. Pro Sorore-Stiftung. A. Purely customer, if at all.

Q. Purely a customer of yours?

MR. WILSON: "If at all," he said.

THE WITNESS: If at all.

By Mr. Schwartz:

Q. I see. Well, when you tell me it is either a customer or has had some connection with Chemie, I can see why it should have gone on this list. But if it doesn't remind you of anything, I would like to ask you why you think it was put on this list as a firm inspected; why it was inspected in connection with Chemie-Sturzenegger. A. That is difficult to guess. I might say perhaps when the investigators went, say, to Dr. Iselin, to Mr. Germann, or to somebody else, and went through the files there, they just picked up one item and were curious about it and made further investigation. That's how—

Q. That is speculation? A. Just speculation.

Q. You have no knowledge?

6789 A. No.

Q. Of any connection between this Stiftung and Chemie or Greutert? A. No.

Q. That would have justified inspecting it in connection with—A. No, sir.

Q. I see. Providentia. I assume no privilege at all? A. That's right.

Q. Prudentia-Stiftung. A. That I claim the privilege as a customer.

Q. As a customer? Is there any aspect of Prudentia-Stiftung that relates to Chemie or to you other than as a customer? A. Not to my recollection.

Q. So the only reason they might have gone on this list is that they were a customer? A. Yes, I think so.

Q. Rex-Film, Gloria-Film A. G., Bellerive-Filmverleih, Zurich. Is that three companies or one, Mr. Sturzenegger? A. It seems to be Rex-Film one, then Gloria-Film second, and Bellerive-Filmverleih, Zurich, third. It seems to relate to three firms. Well, I claim the privilege as customers, if they are. I don't think they are—all but one

6790 or two may be or may have been.

Q. I see. Any relationship that you know of between those three and Chemie aside from banking business

with you? A. The only one, but it's more or less guessing, is that Peka-Film might have or might have had some connection with one or the other.

Q. Connection through Peka-Film to those? A. Yes.

Q. I see.

Rigidor, Bern. I assume no claim of privilege at all? A. That's right.

Q. Rotopulsor, Schaffhausen. A. Well, there I am a little uncertain. I should say I have no hesitation. In the other way, of course, it is a customer.

MR. WILSON: May I interpose, Mr. Schwartz?

MR. SCHWARTZ: Sure.

MR. WILSON: We are all aware that Rotopulsor was a creature of Metallgesellschaft. We also know that it was created in the early years of the history with which you are concerned and I am concerned. I haven't considered this. I am sort of thinking aloud. I wouldn't want to have Mr. Euler's company—that is, Metallgesellschaft—criticize us for violating privileges.

On the other hand, it was somewhat closely related with

6791 the operations of Metallgesellschaft in Switzerland.

THE WITNESS: Sure.

MR. WILSON: Let us have a little reservation about that temporarily.

MR. SCHWARTZ: Yes, but I would like to point out to you that while it may not be at all important for this case, it presents very sharply the issue on this claim of privilege. As you said, we all know it was a creature of Metallgesellschaft, which is a German firm. Any one or all of these firms on this list may be creatures of another German firm, specifically I. G. Farben.

If the privilege is claimed as to Rotopulsor, which we know to be a subsidiary of a German firm, then in every claim of privilege as to another firm on the list it may be

that thereby a very intimate relationship with I. G. Farben is being concealed.

MR. WILSON: I think you have made a good point, and since Rotopulsor doesn't stand alone but, for example, Montaan Metaal, Amsterdam, would be in a similar category—

MR. SCHWARTZ: It may even be on the list.

MR. WILSON: It is on the list. It is at the bottom of one of the pages here. Then you have Metallgesellschaft on the list.

MR. SCHWARTZ: And we have these Stiftungs which are secret, I understand, by explicit provisions of the law. Any
6792 one of these may conceal. I don't mean that in any sense but that the claim of privilege would prevent us from learning about it, may deprive us of knowledge about intimate relationships with I. G. Farben through the firm of Sturzenegger and in connection with a group of firms picked out by the SEC as the ones they investigated in connection with I. G. Chemie and H. Sturzenegger.

That is why I say frankly I don't see how your privilege can stand up.

MR. WILSON: Well, I think that the privilege, Mr. Schwartz, is one of law and not of exigency, you might say. I am concerned at the moment with the circle of firms close to Metallgesellschaft. I have a disposition to say that they ought to be thrown into the general picture. I would like to have today's reservation.

MR. SCHWARTZ: Mind you, I am not terribly interested in the firms connected with Metallgesellschaft. I am terribly interested in the firms connected with I. G. Farben. You see where you leave us. Because we all know that Rotopulsor is a Metallgesellschaft creature you are going to reserve the question, and I think you will probably throw it into the pot, but you will not waive the privilege entirely. You will no doubt claim it as to some companies. That is where I am very interested, because it makes you the judge of whether we may explore relationships which may be

6793 relationships between Chemie, Sturzenegger and I. G. Farben.

MR. WILSON: Well, in that connection I am not too acquainted with the privilege, with the banking secrecy, to speak glibly upon the subject. I have endeavored to analogize to the situation of a lawyer, whose privilege you know is absolute.

You can see that in one case he might be willing to assume the responsibilities of breach of the privilege and in another he might not. Now, his assumption of the breach in one case does not require him to breach it in every other case.

I know that I am not going to be able to convince you on one point, but I am going to state it anyway for the record, because my assurances do have some effect upon the courts. This privilege problem is a technical, legal problem with us and is not motivated by any desire to conceal anything whatsoever, and so far it has only shaped itself up, as I see it, with respect to, or largely with respect to, these Stiftungs.

MR. SCHWARTZ: Those, of course, are only illustrations. We don't know how many companies are. When the privilege is claimed, all we can ever know about them is the name.

MR. WILSON: I say so far that is how it has developed.

MR. SCHWARTZ: It doesn't matter, Mr. Wilson. Any one of these things, any Stiftung, any A. G., may conceal a

6794 direct ownership between I. G. Farben and I. G. Chemie.

MR. WILSON: You miss my point. I say so far our urging of the privilege seems to be boiled down to the Stiftungs. I don't think we have made any—

MR. SCHWARTZ: No, no. If the record were looked at I am sure there are some A. G.'s that Mr. Sturzenegger has said are customers and as to which he would have to claim the privilege. He has also distinguished between even something like Agfa, Zurich.

I think you said that if there had been banking business

with Agfa, Zurich, you would claim the privilege (addressing the witness).

So, it is a very wide claim you are making, and it leaves us in a position of bowing to you for access to information. Whether you regard it because of necessity as to Swiss law or otherwise doesn't help us, you see. We want discovery and information.

MR. WILSON: I don't mean to dominate this situation.

MR. SCHWARTZ: I beg your pardon?

MR. WILSON: I don't mean to dominate. You say "bow to me." I don't mean to dominate.

MR. SCHWARTZ: I understand. We are not quarreling. We are just showing each other where we stand.

MR. WILSON: I think it is a perfectly proper thing to submit to the court. I certainly do. And I hope that
6795 when you have to submit it to the court it will be limited to a very few cases as we go along, that what you now apprehend as a larger group may come down to very few.

MR. SCHWARTZ: We can't apprehend anything until we know the facts. You tell us that you have limited the privilege to only a few companies. You have waived it as to some. Now, we all know, and I think the witness has said in so many words, that the reason you have waived it as to the Providentia and Rigidor is because it is public knowledge that those are so intimately connected with the Greutert circle that they come along with the Greutert circle.

But, public knowledge is only public knowledge. And there may be much private knowledge. Any one of these companies may be even more intimately connected with the Greutert circle and Farben than we now dream of. Without access to fullest information, we haven't discovery, and you haven't made the disclosure you are required to make in this litigation.

MR. WILSON: Well, at least we understand our positions.

MR. SCHWARTZ: All right. I was only using Rotopulsor to demonstrate what might be the case with I. G. Farben.

By Mr. Schwartz:

Q. Rohner A. G., Pratteln. A. Well, they are not clients, but some of the shares may be in the majority—the majority may for a certain
6796 period have been held by I. G. Chemie, and they have been sold afterwards to the interested people, especially as it is more or less a family concern.

Q. Then it might be like Agfa,—A. It's—

Q. —which you said had been sold? A. Yes.

Q. But do you recall whether anybody in Rohner is a client of yours? You said in Agfa a shareholder was a client. I am wondering whether there might be—A. Not now—or with perhaps one exception. But during a certain time there may have been customers. I do not recollect that precisely now.

Q. But if they were a shareholder of Rohner or director of Rohner and were a customer, that which you learned from the files on his account you would not reveal? You would claim the privilege? A. That's just one—

Q. I think that's the logical extension of the principle that we have been going on. I don't mean to hurry the witness into saying "yes" or "no."

Mr. Wilson: All right. Move on.

Mr. Schwartz: I beg your pardon?

Mr. Wilson: Go ahead.

Mr. Schwartz: I—

6797 Mr. Wilson: I think he acquiesced in your observations.

By Mr. Schwartz:

Q. Sopadep, Lausanne. I assume no—A. No reservation.

Q. No privilege at all? A. That's right.

Q. Schweizerische Gesellschaft fur Metallwerte, Basle. That's another subsidiary of Metallgesellschaft, is it not? A. Closely—has been, to my knowledge, closely connected with Metallgesellschaft. I don't know if it would be over-

statement to call it "subsidiary." I am actually not informed about the circumstances, the distribution of the stock, and so on.

Q. I see. Have they been a client of yours? A. They may.

Q. I suppose they must have been certainly in the early days. A. Yes, yes.

Q. And would you draw the line? That which you learned from your client-banker relationship you would not reveal?

MR. WILSON: I think, if I may interpose, Mr. Schwartz, lest Mr. Sturzenegger may have overlooked my principle for the moment, I would like to include that in the Metallgesellschaft circle on a suspense basis which we will resolve during the day.

6798 THE WITNESS: Yes.

MR. SCHWARTZ: Right.

By MR. SCHWARTZ:

Q. The next is Technik & Franz. Am I right that is so close to your firm that you would not—A. No privilege.

Q. —not claim the privilege? A. Certainly.

Q. Teerfarben A. G., Zurich. That, I think, was once owned by Chemie, was it not? A. It was at least partly, to my recollection.

Q. And it was sold, I think? A. It was sold, yes.

Q. So it is like Agfa and another—

MR. WILSON: Peka.

MR. SCHWARTZ: And Rohner.

THE WITNESS: Rohner.

By MR. SCHWARTZ:

Q. And have any of the people who bought it or ran it after it was sold, did they remain as your clients? A. No, not to my recollection.

Q. So you would not claim the privilege to the Teerfarben in any respect? A. No.

Q. Traversina, Traversa A. G., Zurich.

6799 A. That I should claim the privilege as clients.

Q. You should claim the privilege? A. Uh huh.

Q. Is there any aspect of that organization that relates to Chemie? One owned stock in the other here perhaps? A. No.

Q. Any business with Chemie at all? A. No. I wouldn't exclude in any of this mentioned Stiftung that they have perhaps within their portfolio very small, maybe perhaps negligible, I. G. Chemie shares.

MR. WILSON: Mr. Schwartz, may I interpose further to say, as I think this last answer has indicated, that I think we can go so far as to state that this is in the nature of a foundation too; despite the "A. G.," it is a kind of Stiftung or foundation.

THE WITNESS: I think so.

MR. WILSON: Since it looked commercial in character, I felt we ought to go farther and say to you it is a foundation.

By MR. SCHWARTZ:

Q. It is a client? A. It's a client.

Q. And might hold shares in Chemie? A. I am not informed, but might hold. It wouldn't exclude it, you see, but not to a large extent anyway.

6800 Q. All right. Treupha, Basle. You told us that was changed to Baden. A. Yes, it has always been Baden. Has never been, to my recollection, Basle. Baden.

Q. Always Baden? A. Yes.

Q. Am I right in thinking that is close enough to the circle? I think you said that before. A. No. I wonder why this company really has been mentioned. Dr. DuBois—who of course belonged to the circle as he was a member of the board of Sopadep and Industriebank—he had to do with this company, but neither I. G. Chemie nor my firm had. May be that to a certain extent—

Q. But he had? A. He had, yes.

Q. And are they clients of yours at the bank? A. Not to

my recollection. They may have been for a short period or so for a singular transaction, but I can not recollect.

Q. Then only as to a short period or singular transaction would you claim the privilege? A. Yes.

Q. Otherwise—do you say that it may not be as close to the circle or within the circle as Perpetua, but you would not claim the privilege? Is that right?

6801 A. No. But I don't know anything about it except what I have told you.

Q. Visca, Schaffhausen. I assume that the privilege would not be claimed for that. A. No, also certainly not. Has been liquidated a long time ago.

Q. Certainly part of the circle at one time? A. Yes.

Q. Agfa, Binghamton. Now, we will come to a lot of American companies which are either directly connected with A.I.G. or fairly well connected. A. Yes.

Q. Would you say in general of all the American companies that you will not claim the privilege? Let me just mention the names: A.I.G.; Synthetic Nitrogen; North American Industries, Montreal; Pickering, New York; Plaskon, New York. That's all on this list. A. I am inclined not to—

MR. WILSON: I would recommend you not claim the privilege. My only hesitancy was whether Plaskon had any relationship with you.

THE WITNESS: Not to my recollection.

* * *

6809 By MR. SCHWARTZ:

Q. Mr. Sturzenegger, we had just picked Plaskon out of a group of United States or North American companies. I think we should go back to Spicca. I don't think we touched Spicca. Or did we?

MR. WILSON: No.

THE WITNESS: No.

By Mr. Schwartz:

Q. Spicca, Schaffhausen. Am I right, Mr. Sturzenegger, that is or was intimately enough connected with the circle so that you would not claim a privilege? A. Well, according to my recollection it was a client, but it lies far back, so my memory is not clear about that. I think the company was more active before I entered the firm as a partner.

Q. But,— A. It was afterwards wound up. I don't know when.

Q. How is your recollection as to how close it was to the circle? You do think it may have been a client. I think so too. A. Yes.

Q. But do you feel that it was so closely connected with the circle that you would waive the privilege?

6810 A. I do not think it was so close to the circle.

Q. So that you would— A. It would come under the privilege.

Q. You would not group it with Perpetua, Rigidor, Sopadep? A. No.

Mr. Wilson: That would be my recollection of it too.

By Mr. Schwartz:

Q. So you claim the privilege for everything you might know about Spicca as its banker? A. Yes.

Q. And do you recall any relation between Spicca—not "recall," because you say it was perhaps before your time—have you learned, do you know, of any relations between Spicca and Chemie? A. No.

Q. As to which you—you definitely do not recall whether there were such relations? A. I do not recall such relations.

Q. And do you know or would you recall of any relation between Spicca and your firm other than as a client? A. No.

Q. People in your firm having been members of its board, say? A. Might be.

6811 Q. I see. A. But I wouldn't say. Neither could I deny it, because I have no recollection.

Q. Do you recall that Spicca was close to I. G. Farben or its leading personnel? A. Not to I. G. Farben, no.

Q. Nor to its leading personnel? Hermann Schmitz? Carl Bosch? A. I shouldn't say so, but I think as we have taken the line that it must be regarded as a customer, I do, as long as this question is not entirely clear, not feel entitled to—

Q. All right. A. —give more details.

Q. If you should refresh your recollection and find that it was very close to I. G. Farben, would it then come within the I. G. Farben group as to which you do waive the privilege?

MR. WILSON: May I interpose?

(Mr. Schwartz nodded affirmatively.)

MR. WILSON: I am thinking of this kind of a formula in my own mental processes: that a company might be close to Farben and yet not close to Basle. I mean perhaps there are hundreds of subsidiaries of Farben all over the world.

MR. SCHWARTZ: There are.

6812 MR. WILSON: With which we had no connection whatsoever.

Now, my thinking on that premise would cause me to exclude Spicca from the list where no privilege would be claimed.

Is that—

THE WITNESS: To exclude it from the list where privileges are claimed?

MR. WILSON: Not claimed. I have stated it negatively twice. What I mean, Mr. Sturzenegger, is that I think that Spicca in my judgment should be privileged.

THE WITNESS: Yes.

MR. WILSON: Because the formula that I expressed that I think it is not close enough in my thinking to the Basle circle.

THE WITNESS: Surely it isn't.

MR. WILSON: Therefore, we refuse to answer as to Spicca on the grounds of privilege.

MR. SCHWARTZ: That confuses me a little. I thought you waived the privilege as to I. G. Farben because it and its affairs were so clearly an issue in the case. Do you then propose only to waive the privilege with respect to Farben-affiliated subsidiary companies when you feel that they were very close to the Basle circle?

MR. WILSON: Well, Mr. Schwartz, I understand your point

6813 of view. I understand what you are saying. I do not wish to be the final arbiter, as I can not be, of this question.

MR. SCHWARTZ: All right.

MR. WILSON: Let's leave it with that statement at this time.

MR. SCHWARTZ: All right.

THE WITNESS: May I perhaps just add that from my—according to my memory, Spicca was not at all near to I. G. Farben?

By MR. SCHWARTZ:

Q. Not at all—? A. Not at all near to I. G. Farben or its subsidiaries.

Q. Let me help you on its connection with Basle. I think I am right in recalling that at one time in the negotiations for a new partner in the firm Greutert, there was mention of Spicca.

MR. WILSON: Well, at least, let me interpose there, at least gentlemen from Metallgesellschaft in communicating between themselves referred to that fact. I don't think it was one of Mr. Greutert's communications.

MR. SCHWARTZ: I didn't mean to say that. I only meant that somebody who was close to the firm of Greutert and Metallgesellschaft certainly was.

MR. WILSON: Yes.

MR. SCHWARTZ: Mentioned Spicca in connection with new
6814 partners in the firm Greutert. There was the "Spicca Plan," or "Spicca Method." And that would make Spicca close to Greutert.

MR. WILSON: Let me argue that a moment with you further from a very bad memory.

MR. SCHWARTZ: If that is true—take it for true—

MR. WILSON: That's the reason. I don't want to go into the hypothesis that that is true unless we are sure of it, and I would like to check back on this situation. I will try to do it myself.

MR. SCHWARTZ: It is in one of the exhibits.

MR. WILSON: Yes. I think Merton was writing to Euler or Euler to Merton, or something of that sort, and some question came up between them about the use of Spicca. I remember that phrase being used once. Let's all look at that situation. Maybe that is the occasion for changing our position on Spicca.

MR. SCHWARTZ: Okay.

By MR. SCHWARTZ:

Q. The next is N. V. Chehamij, Amsterdam. Am I right in thinking that that is close enough to the circle so that you would not claim the privilege at all? A. Sure.

Q. Next is Chemo N. V., Amsterdam. And the same thing holds true?
6815 A. Same.

Q. N. V. Defa, Amsterdam. And the same thing holds true? A. (The witness nodded affirmatively.)

MR. WILSON: Wait a minute. Are we sure about Defa?

THE WITNESS: Defa—is that not the company where Mr. Mollwo was in some way involved? I am asking myself for a moment.

MR. WILSON: If so I don't think we ought to quibble about it. Let's put it in.

By Mr. Schwartz:

Q. N. V. Delta, Rotterdam. Does the same thing hold true? A. Yes.

Mr. Wilson: Yes.

By Mr. Schwartz:

Q. Mapro N. V., Amsterdam. The same thing holds true? A. Yes.

Q. N. V. Voor Industrie. A. N. V. Voor Industrie. The entire title of the firm name is Industrie en Handelsbelangen. Dutch company.

Q. That is close enough to the circle? A. Yes.

Mr. Wilson: There seem to be three companies mentioned
6816 on that line.

Mr. Schwartz: Yes.

N. V. Newo. Is that an abbreviation of a longer name too? A. According to my memory, the aforementioned Maatschappij voor Industrie en Handelsbelangen had a participation in this Newo. The whole title is just not clear to my memory, but that I think is all.

Q. So that too— A. That is included in the aforementioned firm names.

Q. Among those that you would not claim the privilege? A. Yes.

Q. Then N. V. Delta is, I think, also within that same group? A. I should say so.

Q. S. A. Samia, Paris. That too is— A. Same group. Quite right.

Q. N. V. Montaan Metaalhandel.

Mr. Schwartz: We reserved that, Mr. Wilson, with Rotopulsor and Schweizerische Gesellschaft fur Metallwerte?

Mr. Wilson: Yes.

By Mr. Schwartz:

Q. N. V. Chemische Maatschappij Nitropan. That too is within the same group, is it not, Mr. Sturzenegger? A. Yes.

6817 Q. Then are there two companies, or is it just that mine has a repeated line? A. Only one.

Q. I had it repeated in the typewriting here.

The next is Athanil, and I suppose you would not claim the privilege with respect to that? A. No, of course not.

Q. The next is Budanil, and you would not claim the privilege with respect to that? A. Surely not.

Q. Even though, of course, they did banking business with you? A. No.

Q. The next is Deutsche Landerbank, and you would not claim the privilege for that? A. Certainly not.

Q. The next is the International Company, Berlin. How was that in the German?

Mr. Wilson: Do you have "Berlin" in your translation?

The Witness: Here I have "Vaduz."

Mr. Schwartz: I see that was a mistake. Yes indeed. That is why I went to look at the German. It didn't sound right.

By Mr. Schwartz:

Q. The International Company, Vaduz. Would you claim

6818 the privilege as to that one, Mr. Sturzenegger?

Mr. Wilson: Let's see if we understand what that company is. It's like saying "International Gesellschaft—period."

Mr. Schwartz: Mr. Sturzenegger will be glad to tell us.

The Witness: Perhaps in order to decide I might just mention what I remember, and that's that this company was in some way connected or had to do once with the Technik & Finanz, A. G.

By Mr. Schwartz:

Q. So that it would be within the Technik & Finanz? A. Yes, I should think it should be included.

Q. You would not claim the privilege? A. No. They possibly have been customers, but I do not recollect that. It was far back. But I should say as far as they are connected with the Technik & Finanz A. G.—

Q. You mean only so far, or as to all matters connected with them? A. May I ask Mr. Wilson with regard to his opinion?

Q. Certainly.

Mr. Schwartz: Would you like to reserve that one, Mr. Wilson?

Mr. Wilson: I think maybe I had better think about it.

By Mr. Schwartz:

Q. Inter- —

Mr. Wilson: You see, I don't want this attitude of ours

6819 to be construed as any admission that we are taking all these companies to our bosom at all. What we want to do is to—the whole formula is prompted by desire to cooperate with you to the maximum extent that we possibly can within the privilege.

The Witness: Yes.

Mr. Wilson: Now, Mr. Schwartz,—

Mr. Schwartz: I don't want to seem ungrateful, but you have the duty to make discovery.

Mr. Wilson: Yes, and I hope to perform that duty to the maximum degree possible.

Now, will you pronounce the next name for us, please?

Mr. Schwartz: We will let Mr. Sturzenegger pronounce the next name.

The Witness: It is not pronounceable. (Laughter.)

MR. SCHWARTZ: We will let the reporter copy it.

THE WITNESS: I have no idea how it is pronounced.

(The name referred to is written in the document as follows: Internasjonalt Kvelstoffaksjeselskap.)

By MR. SCHWARTZ:

Q. In Oslo? A. In Oslo. That is a company that is connected with the I. G. Stickstoff.

Q. The Stickstoff that is in your building? A. That is the company we were talking of yesterday,

6820 which is located in my building.

Q. So I suppose you want to reserve that, or what, Mr. Wilson?

MR. WILSON: I would put that within yesterday's formula that seemed to develop itself, and that is a disclosure of its identity as a shareholder in Stickstoff as a piece of information which came to Mr. Sturzenegger in his official capacity in relation to Chemie.

Is that not true?

THE WITNESS: That's true.

MR. WILSON: In all other respects—that is, if you do have any—I think in all other respects for the time being we make the reservation until we know what, if anything, you want about that. I don't know of anything that would interest you.

By MR. SCHWARTZ:

Q. May I ask are they or have they been a client of your bank? A. I believe they have been. Maybe they still are.

Q. Then the Kommerz-Anstalt, Vaduz. A. That's just a client.

Q. So you claim the privilege as to the extent that they are a client? A. Yes.

Q. Do you know of any connections between Chemie and

6821 the Kommerz-Anstalt? A. No, I don't think there are any connections.

Q. And do you know of any connections between your firm and Kommerz-Anstalt other than as client and banker? A. No.

Q. The next is Metallgesellschaft. And you will reserve that with the other subsidiaries, Mr. Wilson?

MR. WILSON: That's right.

By MR. SCHWARTZ:

Q. Next is Norsk Hydro, and I suppose you do not claim the privilege as to them at all? A. No, certainly not.

Q. The next is Opiag A. G., Wien. A. Well, that's just a client. I think, according to my memory at least, the company has long years ago been liquidated. Just a client.

Q. Do you know of any relations between Opiag and Chemie? A. No.

Q. Any relation between Opiag and your firm other than as banker and client? A. No.

Q. Romanil, Bukarest. I suppose you do not claim the privilege as to them? A. No, certainly not.

6822 Q. Not even as to the banking transactions? A. No.

Q. Societe Commerciale et Chimique, Paris. I suppose you do not claim the privilege to them at all? A. No.

Q. Not at all? A. No.

Q. Solway. A. Well, that's a difficult question.

Q. Suppose you reserve it. A. I think I should do it, because we had and have banking business with this well-known firm, so I think I must protect myself.

Q. But they have had extensive relations with Chemie? A. Yes.

Q. Directly? A. Yes.

Q. And have they had relations— A. They were participants in this Igesol-Konsortium, you see.

Q. Now, you do not claim the privilege as to the affairs of that Konsortium at all? Is that right?

MR. WILSON: That has been our position so far. If Mr. Sturzenegger indicates a hesitaney about it, may we embrace that within a temporary reservation, and I may discuss
6823 it with him?

THE WITNESS: It's a difficult question under the legal respect.

MR. WILSON: We had better discuss that.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. Then Societe des Etablissements Chimiques de Winnica, in Warsaw. I suppose you do not claim the privilege as to that at all? A. No, because it is a participation. It was in the portfolio of I. G. Chemie. We had nothing to do with it.

Q. The next list is a group of companies in which I. G. Chemie owns the stock. Perhaps we can take them as a group. A. Uh huh.

Q. Anything that Chemie knows of these companies in its capacity as a shareholder,— A. Yes.

Q. — you do not claim the privilege? A. No.

Q. Anything that Chemie knows or you may know— incidentally, you are not on the board of any of these companies, are you? A. Let me look upon it. No, I'm not.

Q. Except probably Landerbank?

6824 A. No, I'm not a member of the board of Landerbank.

Q. I see. Anything Chemie knows about these companies or anything that you or a Chemie witness would know from having read the Chemie file on these companies would not be claimed as privilege? A. No, not at all.

Q. Now, we will have a question when Dr. Iselin testifies, because he is or was a member of the board of the Swiss bank. A. Yes.

MR. SCHWARTZ: I won't ask you now, Mr. Wilson, but will you reserve that question and perhaps give us an answer with the others, even though Dr. Iselin is not sched-

uled for some time? Because I am sure that Chemie and the Swiss bank had direct relations, so you will have quite a time in distinguishing in Dr. Iselin's memory as to how he learned whatever he knows.

MR. WILSON: I am not sure I can give you a prompt answer, but I do think you are justified in asking me to start the thing working anyway.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. Now, are any of these companies your clients, Mr. Sturzenegger? Perhaps we can work it that way and show that nothing except Dr. Iselin on Swiss Bank will be claimed.

6825 A. The banks, of course. There are a great number of Swiss banks having banking relations, normal banking relations, with my firm.

MR. SCHWARTZ: All right. Mr. Wilson, will you please consider the problem of relations between Chemie and these banks which are known perhaps to a better degree by Mr. Sturzenegger, because he is their banker. The contracts, say, between Chemie and Schweizerische Bankverein and Schweizerische Kreditanstalt. On behalf of Chemie the witness may know so much from his knowledge of the file at Greutert. He may know more. We may have that problem.

MR. WILSON: Yes. I hadn't even approached the latter. I just assumed that Mr. Sturzenegger would know about the transaction as a director of Chemie, but it might divide itself up. I don't know.

By MR. SCHWARTZ:

Q. Did we have it clear? I was asking you who among this list of corporations was a client. You said, of course, the banks were clients. A. Yes.

Q. Are any of the non-banks clients? A. Well, I. G. Stickstoff turns up again here, see.

Q. Yes. Why don't you take them one by one to yourself and when you come across a client you just tell us. A. Yes. I would like perhaps to mention the following:

6826 With some of the other of the companies figuring on this list there have perhaps been occasional transactions, but they can not, in my opinion, be regarded, therefor, as normal clients, so I think there is no impediment to disclose what they were now.

Q. I see. All right. So the only ones on this list that privilege might be claimed — A. Stickstoff.

Q. Stickstoff. Schweizerische Bankverein. Schweizerische Kreditanstalt.

MR. WILSON: Elektrobank.

By MR. SCHWARTZ:

Q. Is Elektrobank a client or has it been? A. Occasional transactions.

Q. Then does it fall within the group that you would not claim a privilege? A. I think there is no reason to claim for the privilege in this case.

Q. Let's take them then:

Schweizerische Bankverein, privilege; Schweizerische Kreditanstalt, privilege, or at least reserved as Mr. Wilson reserved it. A. Yes.

Q. Then the next one is Stickstoff, which we have just had. And no others?

6827 A. Of course, as to the Norsk Hydro, we have and had banking relations, but insofar as we have already made a statement that this company is interested specially under the aspects of I. G. Chemie, we refrain from making—

MR. WILSON: Yes, I would say that we would not claim any privilege there.

MR. SCHWARTZ: In any respect?

MR. WILSON: In any respect.

MR. SCHWARTZ: All right.

7090

MR. WILSON: There is some general statement here about Dr. Auer's trusteeships.

THE WITNESS: Yes, but I read that through at the moment, but I asked myself whether that falls within the range of those schemes, because I do not recollect the construction. I do not know, do not recollect, if the position of Dr. Auer was to hold these shares or whether they were only other agreements. I recollect that one time gentlemen from I. G.

7091 Farben—I believe it is Dr. Rospatt but maybe there has been others too whose names I couldn't recollect—came to Basle, and I remember that questions referring to this—what is it?—South American sales companies or so were discussed. That I remember quite well. I do not remember the exact date, but I believe it was early in 1940.

And I remember further that certain suggestions of the I. G. Farben people were made, certain propositions, in the following line: that I. G. Chemie or my firm should, if they found it possible or were ready to do so, were in some way connected with this I. G. Farben scheme, the details of which I do not recollect, but which had the tendency to connect the South American sales companies, or whatever it was, in some way to—connect these companies with a neutral company or neutral owner. No, I don't know if it was owner. It was just the carrying through of agreements. All details I do not recollect; do not recollect any details. But I recollect that a suggestion in this direction was submitted, and I further recollect that I was against such a scheme, and I think—I believe to recollect that I let the gentlemen know that, that neither I. G. Chemie nor my firm could agree to such a plan. That's my recollection.

Then they urged me and, well, whether I knew another company or persons whom they could contact with this proposition, and as I have stated it to the investigation people

7092 I gave them the address of Dr. Auer just as a lawyer whom I knew, because I was aware of the fact that lawyers in Switzerland, as well as sometimes a fiduciary company, took over fiduciary tasks. Then I suppose, I believe to remember, that in fact letters were exchanged; that Dr. Auer agreed to—how shall I state it?—to get the connection with these South American corporations. And I think that letters have been exchanged then. And it may be that some of the drafts or so were handled through me to Dr. Auer.

By Mr. Schwartz:

Q. I beg your pardon? A. Some of the drafts in this connection were just handed by me to Auer. But, as I have stated already before, I declined to be involved personally or by any firm or by any firm in the I. G. Chemie circle. On the other hand, I was—and that's also recollection I have—I was at the time then aware of the fact that, well, we had reason not to throw these I. G. Farben people just off. I think it was during the preparation of the cancellation of the dividend agreement, and, well, we had been and were still on friendly terms. So that was just the way I thought the matter perhaps could be handled in case this lawyer I mentioned would agree.

Q. So that would be one instance of a plan or a scheme by which I. G. Farben would be enabled to own property
7093 without anybody but the nominal owner knowing about it, would it not? A. As I have stated, I do not recollect how the schedule was. I do not recollect whether by the scheme Dr. Auer was intended to be a nominal owner. I do not think so.

Q. But somebody was to be a nominal owner other than I. G. Farben? A. Probably.

7094 . . . .

Q. Well, that is the question. Whether you know of plans or instances in effect during the war by which

Farben was enabled to own property through a nominal owner. And Rotopulsor, I am asking you whether it differs only from the

7095 question in that Metallgesellschaft is the company and not I. G. Farben. A. Well,—

MR. WILSON: During the war, you say? You mean your periods are again 1939—

MR. SCHWARTZ: The plan that is in effect during the war. Not necessarily begun at that time but in effect during that time.

THE WITNESS: I understand, yes. Well, in a way it seems to be similar.

By MR. SCHWARTZ:

Q. I see. A. But I am just trying to look through the list.

MR. WILSON: What about Chehamij?

THE WITNESS: Well, Chehamij, that is in so far different as Parta, Lausanne, held really and had paid for a participation, minor participation, in the mentioned Dutch company.

MR. WILSON: You mean an actual investment?

THE WITNESS: An actual investment. And as far as I remember, this actual investment was a real investment of Parta and not subject to any obligation to resell or in otherwise dispose of this participation. That is my recollection. Parta has paid this participation of I think about 25 per cent in the Chehamij, or not quite that, with their own money. That is to say, Parta as you know, belonged a hundred per

7096 cent to Osmon. Osmon belonged a hundred per cent to I. G. Chemie. So, therefore, I wouldn't, from the economical point of view, I wouldn't deny this obvious connection.

By Mr. Schwartz:

Q. Which connection? Between who and who? A. Between Parta and I. G. Chemie. But this participation you mentioned, Mr. Wilson, the Chehamij, was not a nominal participation of Parta and Chehamij.

Q. Any other plans in effect during the war which you know of? A. Are you speaking of plans or which—

Q. Were in effect during the war. A. Well, I, in reading this record, I have seen that in combination with the Parta-Chehamij items there, the various transactions the Chehamij Corporation made during the war or before, but I think remaining during the war, seemed to be involved too. Maybe that I just didn't recall the beginning of my phrase. May I have it again?

(The reporter read the witness' answer.)

The Witness: Yes, or mentioned too. And in this respect I remember discussion which took place, but before the outbreak of the war, somewhere in 1939, I believe in Berlin, where these possibilities of a participation in the Chehamij were discussed, and where we in Basle were asked whether we could raise the money to make such a suggested
7097 participation in this company Chehamij.

I do not remember whether this company then was already existent or if it was just to be created, but I understood that these companies should handle different foreign interests of I. G. Farben, and I do not recollect all the details and didn't care much about these details.

I recollect that I was very skeptical about it and reluctant, and at least we came in Basle to the conclusion, well, considering the old friendship and so on, and considering the difficulty of our negotiations also regarding the cancellation of the dividend guarantee contract, that we should do something, and so we agreed that Parta took over this participation in Chehamij with their own money, but we made it clear that that should be a sound investment, that we could

only look upon it from this point of view, and in this connection I further recall that I have maybe at the same discussion which took place in Berlin taken part in negotiating a dividend guarantee in favor of Parta on this participation I mentioned. This dividend guarantee was at least agreed upon and has worked once or twice according to my recollection.

By Mr. Schwartz:

Q. Pardon me. There were a couple of phrases you used and I didn't appreciate their meaning fully. At one time you said "on reading this record." I think you referred
7098 to the SCO document itself. Is that right? A. Yes.

Q. And then another time you said "in view of the friendship we should do something." A. Yes.

Q. You meant, I think, in view of the friendship between Basle and Farben you should do something for them? A. We should just not repudiate a scheme but try to come to a solution which of course couldn't hamper our interests but was not too unfriendly.

Q. I understand. It was just that the words you used might not be clear. A. Yes. Excuse my English.

Q. Just now you mentioned some dividend guarantee that worked once or twice. A. Yes.

Q. You mean on which payment was made once or twice? A. Yes.

Q. By "working," you mean payment made? A. Yes, I mean that; yes.

Q. All right, sir. Go on. A. Well,—

Mr. Wilson: He is continuing to list the items.

The Witness: Well, for the moment I do not recall other constructions or items than the aforementioned; but maybe
7099 that you are in a position to refresh my memory, but for the moment I think that should cover the

circle of nominal ownerships, as you called it, in some way or another for I. G. Farben.

* * *

7106 By MR. SCHWARTZ:

Q. So you will appreciate that. So, will you think again, please, as to whether you recollect nominal ownerships by anybody in Switzerland where the real owner was a person or a corporation in German-occupied territory. A. I cannot recollect any for the moment, but subject to your refreshing my memory.

Q. Now, you reported two such relationships with respect to Romanil and Athanil; is that right, sir? A. That's right.

Q. To be very specific, did you report—I'm sorry. Yes, let's ask that: To be very specific, did you have any such relationships for people in France, in Norway, in the Lowlands, in Poland, in any of the Balkan countries, during the war at any time? A. I do not recollect any, Mr. Schwartz.

Q. And did anybody else, to your knowledge, in your firm, Messrs. Werder, Sutter, Haller, Mollwo, and so on? A. Neither, to my recollection.

Q. Nor anybody in I. G. Chemie? A. Nor anybody in I. G. Chemie.

* * *

7117 Q. Well, was this a letter from Farben or from the Consulate General? A. I think it was a letter from Farben delivered through the Consulate General.

MR. WILSON: It looks to me from the memorandum that the credit came in—look at that provision.

THE WITNESS: Where is it?

MR. SCHWARTZ: On page 45 of the original, Mr. Sturzenegger.

THE WITNESS: Page 45? I see it (examining document). Oh, yes, it is only mentioned in a short way and—well, it hasn't been carried through. My memory is not exact about

7118 that. I just wanted to mention it in this connection.

By Mr. Schwartz:

Q. You said, I think, that you returned the money and you wouldn't have anything to do with it. A. Yes, it amounts to that.

Q. About how much money was involved? A. It is difficult to say. I should—I believe more than a million francs.

Q. More than a million Swiss francs? A. Yes.

Q. And you returned it how, sir? A. We returned the amount.

Q. Beg pardon? A. I think the amount was already transferred and we re-transferred it.

Q. You received the letter and it asked you to transfer an amount to another country—and I will ask you in a moment what the other country is, but let's pass that. How was it already transferred? A. I believe—but, please, my memory may be inaccurate—that the amount, at about the same time the letter came in, was transferred to us with a Swiss Bank, or it was only announced that—I do not recollect, but I think afterwards it was transferred to our firm with the request to do such and such thing, to transfer it further to such and such address, some

7119 other country. And as I told you, then we didn't carry through that, but returned, re-transferred it. I think it was I. G. Farben, to the best of my recollection.

Q. I was interested in how you were given the money before you agreed to accept it. Do you mean that it was remitted to your credit at another bank? A. Probably, probably so. It is the ordinary way how it is done.

Q. And to what country were you supposed to remit this money? A. According to my recollection, which is not absolutely exact, I should say it was Spain or Portugal.

Q. And how were you to do that, and to whom there? A. That I do not recollect.

Mr. Wilson: This doesn't fix the date of the transaction.

Mr. Schwartz: No.

By Mr. Schwartz:

Q. Will you do that for us? A. It was during the war, in '42 or '43, I should say, but it is more guessing. I am not sure about it.

Q. Forty-what? A. In '42 or '43, I believe.

Q. Now, this says in my translation: "Sturzenegger, as the clearing office was able to establish from the books, returned this credit."

7120 A. Uh-huh.

Q. Just what was it that the clearing office was able to establish from your books? A. I think they were able to establish that we retransferred the amounts credited to us to the party who had caused the transfer, I think. I believe it was I. G. Farben. If we had transferred the money to the other country as requested, then it would have showed in our books.

Q. I see. So at first you had this money given to you at a Swiss bank to your credit? A. I suppose it was done.

Q. There wasn't anything you could do about that. A. Yes.

Q. So then—well, did you order this Swiss bank to send the money back, or did you send the money back? A. That is just technical detail which I do not recollect, but it was done in the practical way.

Q. I see. But you didn't accept the money and take it and use it? A. No, not at all.

Q. Not even for a purpose other than— A. Not at all.

Q. —requested? A. No, not at all.

Q. You never really drew on this money?

7121 A. No, no.

Q. You left it in the bank in which it was credited to you? A. Yes.

Q. And then either refused to accept the remittance or took it, but only for the purpose of sending it right back to Farben? A. That is my recollection.

Q. You don't remember who signed this letter? A. No.

Q. But you are pretty sure it was Farben? A. I believe it was Farben, yes.

Q. With whom did you discuss it in your firm? A. As far as I recollect, Mr. Werder. It was natural as he is the principal bookkeeper, you see.

* * *

7131 Q. So you might have gotten letters from I. G. Farben by hand, but not through the Consulate General? A. Yes, that might have been the case. I do not recall such a specific event, but I wouldn't like to exclude it.

Q. Now you are talking about the letters from Farben by hand. A. Yes.

Q. But you are very definite, are you not, that you got only one letter from I. G. Farben during the war through the Consulate General? A. To my recollection, yes. I try to strain my memory, but it is only that that I can recollect that we got through this channel.

Q. Did you talk to anybody else except Mr. Werder about this letter before you rejected the whole transaction? A. Maybe with Mr. Mollwo, but I am not sure.

Q. Was Mr. Mollwo in close touch with you in '42 or in '43?

7132 A. That would be exaggerated, but he sometimes went to Basle where he had lived a long time, and then he visited me and we talked of special events and other things. But I do not recollect having talked to him at the moment referred t . I am sure that he was informed about the fact and the retransfer but maybe afterwards.

Q. I see. By that time, I suppose, Mr. Roesch was dead? A. Yes.

Q. He did die in '41? A. Yes.

Q. But Mr. Gadow was active. Do you recall that you talked to Mr. Gadow about this? A. I do not recall it, but I wouldn't exclude the possibility.

Q. Before you rejected it or afterwards? A. Well, the possibility is there that I talked to him before, but it is not

according to my memory. I think—I believe to remember that I talked it over only with Werder and then maybe other people may have been informed, but—well, my recollection is not precise enough. I wouldn't like to make statements.

Q. Do you know why it occurs to you that you might have talked to Mr. Gadow? What connection did he have with such a matter? A. Well, you are no doubt aware of the close business

7133 connection that existed in some way, still existed, —between I. G. Chemie and my firm. You know, of course, also that I. G. Chemie had and has still participation in the firm—well, that was not involved. But we are not far one from the other—I have given you the scheme—so from time to time, or even often, we talked matters over that just came up, just in a natural way, and therefore I wouldn't exclude it. I am not at all sure that it happened, but it might have happened.

Q. Do you recall whether you talked to Dr. Iselin about this matter? A. That I do not recall. It may have been, too, or later anyhow. Occasionally, but—well, I have no recollection at all about that.

* * *

7178 By Mr. Schwartz:

Q. Mr. Sturzenegger, can you be very clear that you did not execute the transaction requested in this letter? A. I told you that is my recollection.

Q. Well, can you be more than just remembering? Can you state definitely and without qualification that you did not execute this transaction? A. We did not execute the transaction requested.

* * *

7220 Q. Do you recollect doing any business with either Banco Aleman or Banco Espirito in connection with this transaction? A. No, I do not recollect that.

Q. As I understand it, Mr. Sturzenegger, you have said

7221 that you did not execute this transaction; is that right? A. No, I think my attitude was I didn't execute it as it was requested.

Q. Did you mean by the words "as requested" that you had executed part of the transaction? A. No, that is not right either. I only meant we haven't executed it in the way it was requested. We have, all according to my recollection, transferred the money back, but I am not sure in my recollection of the way it was transferred back. It may be another way than the way it came in, and it is just this reservation I wanted to make.

Q. Do you mean to say that all the while I was questioning you about whether you executed this transaction, you knew that you had done something other than just sent the money back to the sender? A. No, we sent it back, but I don't know —that is up to my bookkeeper—how the money was sent back. Maybe it was put at another Swiss bank at the disposal of the parties who had made the order. That simply I do not recollect, and therefore I intended to make a reservation. But to repeat it again, according to my recollection, the transaction as it was requested was not carried through.

Q. I asked you repeatedly whether you carried through any of the transaction and whether you carried through any part of the transaction, and if I remember, Mr. Wilson, you directed him not to answer one of those questions because it

7222 had already been answered. And all that while you were being questioned, Mr. Sturzenegger, you knew that you had done something other than send the money right back to the sender in the same way it came? A. No, I knew nothing at all. According to my recollection, the money was transferred back, but how that was done I didn't simply—simply didn't recollect.

* * * *

7309 Q. Now, looking at Exhibit 8, your letter to Laenderbank, and Exhibit 7 which purported to be a letter from Laenderbank to you, have you any doubt now

but that you received a letter of which Exhibit 7 is a copy? A. I have no doubts. I do not recollect having received it, but I have no doubts.

Q. Now, in this Exhibit 8 you state that you will or shall place at Laenderbank's disposal this amount of Swiss francs. A. (Witness nodded affirmatively.)

Q. Did you do that? A. Yes, we did it.

Q. How did you do it, sir? A. Well, I didn't remember, as I told you, but I have got in the meantime more detailed information, and I am going to tell it and I'd like to request Mr. Wilson, who has received the information, to correct me if I am not correct as to dates and so on.

Q. I see. You have called Switzerland, have you?

7310 MR. WILSON: I have gotten the detailed information, Mr. Schwartz.

MR. SCHWARTZ: A call was made to Switzerland?

THE WITNESS: Call—

MR. SCHWARTZ: By Mr. Wilson, I gather?

MR. WILSON: A call was made from Switzerland to me.

MR. SCHWARTZ: Did you ask the call be placed to you?

MR. WILSON: What do you care?

MR. SCHWARTZ: I see. I think it's a proper subject of inquiry.

MR. WILSON: Of course it's not.

MR. SCHWARTZ: Whether the witness sought to refresh his memory or whether it was just a coincidence that you received more information from Switzerland.

MR. WILSON: Never mind whether he sought it or whether it's coincidence. If he's got information, you want it, don't you?

MR. SCHWARTZ: Yes, I do, sir.

MR. WILSON: All right.

By MR. SCHWARTZ:

Q. All right. Will you give us this additional information, Mr. Sturzenegger? A. Yes. What was the question, Mr. Schwartz, to begin with?

Q. I had asked you how you placed it at the disposal,
7311 and so on. A. Yes.

Q. But if you like will you give us any or all additional information? A. Yes.

Q. Not merely answering the question. A. Well, I will begin perhaps with the question—

Q. All right, sir. A. —that's pending.

Q. As you like. A. And as I have heard, we requested—

Q. Pardon me one moment. A. By "we," I mean our firm.

Q. Pardon me before you begin.

MR. SCHWARTZ: Mr. Wilson, do I take this as hearsay from you or hearsay from the people on whom the witness may rely as having knowledge of the facts, other than you? That, I think you will agree, is permissible for me to ask.

MR. WILSON: Well, I don't mind telling you that the information that was given to me I gathered came from records. It was so detailed that nobody could have carried it in his memory, just as this man yesterday couldn't have carried it in his memory, Mr. Schwartz.

MR. SCHWARTZ: I see. And will you tell us the source, the individual who searched the records?

7312 MR. WILSON: One of my clients.

MR. SCHWARTZ: I see. Well, really,—

MR. WILSON: Gave me the information.

MR. SCHWARTZ: I understand very well that it's privileged with you, Mr. Wilson, but of course it's information from Basle, is it not?

MR. WILSON: Sure.

MR. SCHWARTZ: All right. And will you tell us whether it's information from within the firm of Sturzenegger?

MR. WILSON: The source had to be that.

MR. SCHWARTZ: It had to be? I see.

MR. WILSON: From the very nature of things it had to be that.

MR. SCHWARTZ: So the witness is relying on information from his own firm? Is that right? Whether through you or—

MR. WILSON: I'm assuming it had to be so, Mr. Schwartz.

MR. SCHWARTZ: Well, I am certainly entitled to ask him from whom he heard it.

MR. WILSON: Sure, Let him say from me.

MR. SCHWARTZ: He will say from you. And then you won't tell us from whom you heard it?

MR. WILSON: No, sir.

MR. SCHWARTZ: And you won't let him tell us from whom you heard it?

MR. WILSON: Oh, I don't know—

7313 MR. SCHWARTZ: He knows?

MR. WILSON: Sure he knows.

MR. SCHWARTZ: Tell us, why not? Stop fencing.

MR. WILSON: Mr. Germann told me.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. Mr. Sturzenegger, will you proceed, please? A. Well, our firm, as I heard, requested—

Q. Beg your pardon? I'm sorry. A. —requested—

Q. I really didn't hear your words. Would you just say it again, please? A. Yes.

MR. WILSON: "Our firm requested" was the beginning.

MR. SCHWARTZ: All right.

THE WITNESS: As I heard, our firm requested the Swiss National Bank to transfer this amount involved to the Union Bank of Switzerland.

MR. WILSON: That is the Swiss francs?

THE WITNESS: Swiss francs, yes.

MR. WILSON: Yes. Now, let me interrupt you there a moment, Mr. Sturzenegger. I think there is an omission that should be supplied.

MR. SCHWARTZ: In what, Mr. Wilson?

MR. WILSON: As to why it was necessary to instruct

Swiss National Bank. We want to establish the credit note was received from the Swiss National Bank for these francs.

MR. SCHWARTZ: I can't let you testify.

MR. WILSON: All right. If you don't want to know the facts, it's all right with me.

MR. SCHWARTZ: You know very well we want the facts, but we can't have you state them.

MR. WILSON: All right.

MR. SCHWARTZ: So if you will let the witness state his testimony, we will be very appreciative.

MR. WILSON: He can't remember all these details; without these two pages I couldn't remember them.

MR. SCHWARTZ: Then you are deliberately keeping those papers from him so that he can't tell us all that was learned from Switzerland? Isn't that the fact?

MR. WILSON: That's a dirty accusation, Mr. Schwartz, and I resent it completely.

MR. SCHWARTZ: I see. Well, why don't you give him those papers so that he can—

MR. WILSON: These are rough notes of mine that have to be supplemented by things that were said orally to me.

MR. SCHWARTZ: I see. Why don't you type them up, and I will be glad to adjourn for that purpose.

MR. WILSON: I will not type them up for anybody, Mr. Schwartz. Not at all. Do you understand?

7315 MR. SCHWARTZ: Uh-huh. All right.

By MR. SCHWARTZ:

Q. Will you proceed, Mr. Sturzenegger, please? A. Yes. And then, as I understood it, the Union Bank was requested by my firm to transfer these Swiss francs involved to the Banco Aleman Transatlantico, Madrid, and to hold this amount at the disposal of Deutsche Laenderbank A. G.

Is that right?

MR. WILSON: That's correct, sir.

THE WITNESS: That's my understanding.

MR. WILSON: Now, did you get confirmation that that had been done?

MR. SCHWARTZ: I am examining the witness, Mr. Wilson.

THE WITNESS: Well, I told you—

MR. SCHWARTZ: I won't let you examine him, and I won't let you testify.

By MR. SCHWARTZ:

Q. Is there anything else you want to say, Mr. Sturzenegger? A. Well, I wanted to ask you if that covers the question or if I should try to give additional information about—

Q. Please give us any additional information you have.

A. Well, I have heard too that we have received
7316 notice from the Banco Aleman Transatlantico that this has been carried through, and that accordingly we—that is to say, my firm—has debited the Deutsche Laenderbank again with the amount involved as we had formerly when receiving this amount through the Swiss National Bank had credited them. Now they were debited again, and the transaction was, from our viewpoint and according to my understanding, finished.

Q. Have you since yesterday learned any further information about the matters we talked about yesterday and the day before? A. I have heard, Mr. Schwartz,—

Q. Some further information? A. Yes.

Q. Will you tell us? A. Yes.

Q. All the further information you have. A. Yes. The further information refers to this other amount involved in the yesterday's deposition—means this—

MR. WILSON: Escudos?

THE WITNESS: Escudos, about nine million, isn't it?

By MR. SCHWARTZ:

Q. Yes. A. Well, I have heard that this amount of escudos as mentioned in the letter of Laenderbank of July 17th, isn't it?

7317 Q. July 19th, is it not?

MR. WILSON: The 19th.

THE WITNESS: Yes.

By MR. SCHWARTZ:

Q. That is Exhibit 4. A. Yes. —has been transferred to the Banco Espirito? How is it called? I do not recollect.

MR. WILSON: The Lisbon Bank?

THE WITNESS: The Lisbon Bank.

By MR. SCHWARTZ:

Q. Would you like to look at this? A. And this without our acting as intermediary. That we have received notice that the amount was there at our disposal, and that further on, at a later date which I do not remember now, but I think Mr. Wilson could help me, we instructed the Lisbon Bank to retransfer this escudo amount to the Banco Aleman Transatlantico in Madrid, and this also for account of the Deutsche Laenderbank A. G.

May I ask perhaps Mr. Wilson to correct me if the information I am repeating as having heard it from him is not in accordance with his figures and dates?

MR. WILSON: I'm not sure whether your direction to Lisbon said any more than to transfer to Madrid.

THE WITNESS: I see.

MR. WILSON: Without defining the credit there.

7318 THE WITNESS: Sure. Yes. But I understood it that ultimately the Banco Aleman Transatlantico, Madrid, had instruction to place it at the disposal of Laenderbank.

MR. WILSON: That's right.

THE WITNESS: That's my understanding.

By MR. SCHWARTZ:

Q. Have you learned anything else since yesterday about this whole transaction? A. I have learned furthermore that

if I am not mistaken we had at the moment previous credited the Laenderbank for the escudos, also after having received notice that these escudos were at our disposal in Lisbon, and that after having given the instruction to retransfer this amount in favor of Deutsche Laenderbank A. G.—

Q. Beg your pardon? A. —in favor of Deutsche Laenderbank A. G., Deutsche Laenderbank has been accordingly debited in the books of my firm. That is my understanding, Mr. Wilson.

MR. WILSON: I would have that impression.

By MR. SCHWARTZ:

Q. Have you learned anything further about the transaction since that time? Since yesterday? A. Well, I heard about the dates; but I do not recollect them. Therefore, I would have to rely on the notes probably made by Mr. Wilson.

Q. What kind of dates? Of what?

7319 A. Dates when we received the one or the other of the amounts and when these amounts were retransferred in favor of Deutsche Laenderbank. Then another fact I think has already been mentioned—it's incidental—that this first-mentioned Swiss franc amount has been placed at the disposal of my firm through the Swiss National Bank.

Is that right, Mr. Wilson?

MR. WILSON: By and for whose credit, Mr. Sturzenegger?

THE WITNESS: By order of Deutsche Reichsbank, if I am not wrong.

MR. WILSON: Likewise with respect to the credit to the Lisbon Bank?

MR. SCHWARTZ: Mr. Wilson, you understand I have a blanket objection to anything you say in this connection?

MR. WILSON: I understand. I am not supplying any information at all.

By and for whose credit in Lisbon, Mr. Sturzenegger?

THE WITNESS: I understood it by order also of the Reichsbank. But in both cases, as I understood it from what I have heard, the Deutsche Laenderbank has been credited for those amounts.

By MR. SCHWARTZ:

Q. By "both cases," you mean both kinds of currency? A. Yes, I mean that, Mr. Schwartz.

* * * *

7491 Q. Now, Mr. Auer is also on the board of Rigidor? I have a note here that he was elected to the board of Rigidor in 1944. A. He is a member of the board; that's right.

Q. Now, Rigidor and Perpetua, as we have shown, were associated with Mr. Auer. Now I'd like you to help us on the relationship of the firms with your firm. I show you a chart, Mr. Sturzenegger, which is identified on the top as

7492 "Attachment 2." Mr. Wilson has seen it before. It was an exhibit to some of our motion papers in the past. And I am giving you another copy now, Mr. Wilson.

MR. SCHWARTZ: Let's just mark it for identification as the next exhibit.

(The document referred to was marked for identification as Defendants' Exhibit 18-24993.)

By MR. SCHWARTZ:

Q. If you haven't seen it before, you may want to spend some little time studying it, because it's rather elaborate. A. I have seen it but as the scheme is drawn up a little differently than I have been used to see it, it is perhaps not to every detail absolutely clear to me. But if you will just ask me specific questions I will try my best to explain it.

Q. Well, first I'd like to tell you that it's based to the best of our ability on the information in the SCO documents. A. I see.

Q. So, if there is any inaccuracy it is because we didn't appreciate what they said or because they didn't give full information, or they may have made a mistake.

Secondly, it is our attempt, as you see, to chart the
7493 ownership relationship of the firms intimately connected with your firm of Sturzenegger. A. Yes.

Q. I think you have described it as the "circle" of firms close to you, have you not? A. I believe I used this word just—.

Q. Yes. We called it the "Greutert complex." A. Yes.

Q. I think you use the word "complex" to mean a question, so we will change. A. We use it often too.

Q. Suppose we call it the "Greutert circle." And we have tried in the vertical column to show the ownership relationships and then we have drawn a long bracket with the word "Control," suggesting that we think that these firms control I. G. Chemie. Do you notice that long bracket on the right side? A. (The witness pointed to the document.)

Q. Yes, that's right. And you will notice we chart that Chemie too owns part of your firm in the middle of the circle. By this arrow from I. G. Chemie, (Indicating), we refer to the fact that as of that date, 1942,— A. I see.

Q. —Chemie owned 44 per cent of your firm. A. I see.

7494 Q. Do you see the relationship then? A. Yes, I see it. Yes, that's right.

Q. We show that certain individuals owned Rigidor, that certain individuals and Rigidor owned Industriebank, that Industriebank, Chemie and you owned your firm. A. Yes.

Q. That your firm owns Perpetua and that Sopadep also owns Perpetua, but, in turn, Perpetua owns part of Sopadep, and individuals own part of Sopadep. A. Yes.

Q. And we have also charted the relationship of these individuals with these firms. A. Yes, yes.

Q. And most or all of them, with the exception of you as part owner of your own firm, borrowed money from other firms in the circle? A. Yes.

Q. Or in part borrowed money in order to finance their purchases. So let's come to Rigidor, which is the specific company in which Mr. Auer owns some stock. That is the first corporation near the top. A. Yes.

Q. And below the individuals. A. Yes.

Q. Six individuals own Rigidor?

7495 A. Yes.

Q. And in the footnote we gave the six. Among them Mr. Auer. A. Among them Mr. Auer, yes.

Q. Those six individuals took some advances from Perpetua in order to buy their stock? A. Yes. Perhaps only temporarily.

Q. Yes, of course. And not all of them, and not to the full amount. A. Not all, yes.

Q. And we have said that they were financed to an unknown total by Perpetua, Greutert and Rigidor, because we found mention of such loans in the SCO. A. Yes.

Q. And that a certain amount of their stock is still pledged as of that date for the loans they got? A. Yes.

Q. So those six individuals were not unqualifiedly and without any exception the complete owners of Rigidor? A. Well,—

MR. WILSON: To the extent that you have made explanation.

THE WITNESS: To the extent, yes.

MR. SCHWARTZ: Yes.

7510 MR. SCHWARTZ: Certainly. There was a pending question.

(The reporter read the pending question as follows: "Is your firm managing or helping to manage the liquidation of Mr. Mollwo's estate?")

THE WITNESS: To this I should say that on several occasions members of my firm, especially Mr. Werder, myself also, have been asked advice by members of the Mollwo family.

MR. SCHWARTZ: All right, sir.

* * *

7511 MR. WILSON: Mr. Schwartz, at the recess your line of questions had been in respect to the status of these various corporations—

MR. SCHWARTZ: Yes.

MR. WILSON: And then one or two questions before the end, you switched to the present status of the Mollwo situation. I don't think that that was made clear to you in answering, and very largely by reason of the date situation.

MR. SCHWARTZ: Uh-huh.

MR. WILSON: Since the death of Mr. Mollwo, there have been certain changes. I have thought about this situation, that is, the question of dates in this case, and whether your interests can or should extend beyond some indefinable date in 1945 when the shooting war was over, and I can't very well see how you can extend beyond that period of time.

I should like you to take my assurance that what transactions have occurred since then have been within the circle, as I understand it. I can very well see that if Hermann Schmitz was today holding shares that Mollwo held, that that could be a matter of interest to you, but as I am informed, and

7512 reliably so, the situation is still within the circle, and my impression is that the time limit on the evidence in this case should expire some time in 1945.

You do not agree with me about that?

MR. SCHWARTZ: No, I must most certainly disagree, Mr. Wilson.

* * *

7527 MR. WILSON: That is the disposition of the preferred shares of I. G. Chemie that were held by Sopadep.

* * *

MR. SCHWARTZ: That's right. Sopadep owns 60,000 or 40,000?

MR. WILSON: Forty thousand.

THE WITNESS: Owned 40,000.

By MR. SCHWARTZ:

Q. And until when did it own it? A. Until November or December of last year.

Q. And then it was sold? A. It was sold.

Q. To— A. —Industriebank.

* * *

7539 Q. Oh, then you have this participations only by virtue of your agreement with other partners? A. I should say so.

Q. And you couldn't sell it unless you got their agreement, because you couldn't substitute another person for yourself in a contract of partnership; is that it? A. No, that I couldn't.

* * *

7545 Q. So certainly, since the time there were only 200,000 preferred outstanding, or even a little later, since 1940, when there were only 100,000 outstanding, the circle has owned all the outstanding preferred of I. G. Chemie? A. Yes, that's right.

Q. Yes. A. Always this word "circle," of course, is not taken in any legal or other sense, but just in the meaning you gave it.

7546 Q. Well, the two corporations in the circle were the actual owners. A. Yes.

Q. And as we have shown, the circle is a chain of corporations and individuals which seems to be rather circular; is that right? A. Well, circular? It depends on what you understand by that.

Q. Of course. A. But they had relations to each other.

Q. Yes. A. Perhaps not to each other, but members of one company had relations to members of other corporations.

Q. Yes, and they had option relationships. A. Not all interconnected.

Q. Yes, but there was some option relation. A. We have established them.

Q. We have established them, yes. And there were some loan arrangements and there were stock arrangements. A. Yes, as established.

* * * *

7547 A. I meant to make reference only to Industriebank as a long-term owner who had 100,000 shares nearly from the beginning.

Q. Uh-huh; yes. A. But I say from the—

Q. Then, can we agree that since '39 or '40 the circle, as a connected group of corporations and individuals, has owned the preferred shares of I. C. Chemie? A. To make it exact, those two companies.

Q. I see. Well, of course those two companies. They own the stock. A. Yes, yes.

Q. But, in turn, these two companies are owned by the other companies and individuals in the circle. A. As established according to our—

Q. From this chart; yes, how, after 1940, when the common shares were reduced by some 50,000 or so, there remained

7548 250,000 common shares outstanding, did there not? A. To my recollection yes, that's right, sir.

* * *

7549 Q. Right. If you look at the investigators' report, page 19 of the German text, which is page 16 of my translation—you have the investigators' report now? Here is the investigators' report (indicating).

* * *

Q. I will read my translation and you will check it. A. Yes.

Q. "Of the 73,000 Swiss-owned shares from a total of 250,000 original shares"—and I think my translator means "common" when he says "original." A. No doubt.

Q. —"approximately one-half are in the hands of companies and persons close to I. G. Chemie. The other half are divided among the public." A. Yes.

Q. Is that a fair translation, roughly speaking? A. Yes. "Close to I. G. Chemie"? I should say that seems to be a fair translation. In German it is "die der I. G.
7550 nahestehen."

Q. It is just a variation in the translation? A. No.

Q. Well then, is that right in the translation? A. If this statement is right?

Q. Yes. A. Well, with the qualification that perhaps the wording "nahestehen" or "close" to I. G. Chemie is in some way, according to my feeling, an over-statement. What does it mean, "close"?

Q. Well, that is just what I would like to know.

* * *

7551 A. Well, I know perfectly well that a great parcel of shares is owned by individuals and corporations which were mentioned when we were talking about this circle, to take your words. But what struck me here is the expression of the Swiss Compensation Office report, "nahestehen." Of course, you can say, for instance, Industriebank can be called close, but what is close?

Q. I should think so. A. Is it close only because this corporation is a big shareholder? I should say that is going, perhaps, too far. That is just what I meant.

Q. Well, perhaps we needn't worry ourselves about what is close if we know who they are.

* * *

7557 By Mr. Schwartz:

Q. Mr. Sturzenegger, we started on this excursion with Mr. Auer, Mr. Jakob Auer, and I'd like to ask you particularly about him. Have there been any changes in his relationship to the circle since 1940 when he became a stockholder of Rigidor? A. No, only I do not recall for the moment, but we will see from the files whether his stockholding was the same afterwards.

Q. As a matter of fact, it increased? A. It increased.

Q. I think we understood that this morning. A. I think 40 and 35.

Q. That's right. A. That's the difference.

Q. And in 1944 he was elected to the board of Rigidor. I think you recalled that that was consistent— A. Yes, I recall that.

Q. Have there been any other changes than those and any changes since, say, the end of last year? A. No.

Q. Or up to date?

7558 MR. WILSON: In Auer, this is?

MR. SCHWARTZ: In Mr. Auer's relationship to the circle in these matters.

THE WITNESS: No.

By MR. SCHWARTZ:

Q. Has he bought stock in Chemie or sold stock in Chemie? A. Well, not to my knowledge. He may privately, of course, on the stock exchange, have done everything, but I do not know of such facts.

Q. Has he been elected to the board of any of these other companies? A. No, not to my recollection.

Q. He is a notary, is he not? A. He is a lawyer and a notary—notary I am not quite sure, but a lawyer in any case. Maybe both.

Q. Well, whatever he is, he is some kind of professional? A. Yes.

Q. Has he done any professional services for any of these firms since 1940? A. Well, anyhow, if so, not on a large scale. Maybe he has been concerned in a tax matter or so, but I do not recall a special occasion. I wouldn't exclude it entirely.

Q. Is he related by blood or marriage to any of the
7559 individuals in Chemie or in the circle? A. No, he's not.

Q. You remember we talked of the Germanns and Gadow and Hermann Schmitz and the others. He is neither blood nor marriage relation of anybody? A. No. He is in some way—I do not know exactly how—related or was related with Mr. Greutert.

Q. I see. A nephew? A cousin? A. I think more distant.

Q. I see. Had he done any professional work or any work of any kind for the firm of Greutert before it became the firm of Sturzenegger? A. Not to my knowledge.

Q. Was he a customer of the firm of Greutert? A. Well, that may be.

Q. Has he been a customer of the firm of Sturzenegger since it became that? A. Yes, he is.

Q. Would you describe his business with your firm as large or small? A. I would describe it as small.

Q. Is that because he is a man of modest means or because he has done his business elsewhere? A. He's done his business elsewhere. Just has his normal business, and, as I understood, always quite a good

7560 business. A very much occupied lawyer in Zurich.

Q. Is he what you call a high-priced lawyer? Is he very well regarded and gets lots of money for his work? A. I'm not informed.

Q. Like Mr. Wilson, for instance? A. I'm not informed about that. He's perhaps not one of the most outstanding lawyers in Zurich, not as Mr. Henggeler, for instance, but he is very highly regarded and a highly esteemed man and lawyer.

Q. Well, from what you know of his reputation, do you say he is a man of modest means or medium fortune? A. Well, I am not informed about his fortune.

Q. Well, you have been his banker at least once. A. Well, but, you see, I am sure that I am not his only banker, and so I am not informed about his means, but I believe that his fortune is quite nice, I should say.

Q. I see. A. That's more guessing and my impression, but you asked me about it.

Q. I think your impression is probably a very good one, because you know him or you have known him, and you have been his banker, and I think the impression is a good one.

About how old is he? A. About 55 I should say.

Q. Now?

7561 A. Yes.

Q. Now, in 1940 he first became a stockholder in Rigidor? A. Yes.

Q. And I am sure we can agree that from the chart alone it appears that that is a select group of people. One doesn't become a stockholder of one of those companies merely by accident. Can you tell us of the circumstances under which he became a stockholder? A. I am just asking myself whether one of the former stockholders had died, but it seems not.

Q. I think the occasion, as far as I know, was an increase in the capitalization of Rigidor. A. That was right. Yes.

Q. And perhaps that helps you to remember something about the circumstances. A. Well, when was it? It was in 1940?

Q. 1940 I think we can be sure. April 16, 1940. A. April 16, 1940. I have no exact recollection about that, but I knew that he was in some way distantly, as I told you, related to Mr. Greutert, and as you are well aware, many of these people involved in this so-called circle were friends or relatives of Mr. Greutert. I think that's one of the chief reasons.

Q. I see. But of course—

7562 A. We knew him. Mr. Greutert had mentioned him now and then. I think it came up in this connection.

Q. But of course by April 1940 Mr. Greutert was dead? A. Yes.

Q. And you were just—you were the sole partner in fact, and a month or two after that I think you became the name partner. A. Pardon me?

Q. Am I right that Mr. Greutert died in September 1939? A. That's right.

Q. And you remained as the sole partner, and in June of 1940 the firm name was changed? A. Yes, that's right.

Q. So in April of 1940 Mr. Greutert was not there? A. No, no.

Q. And so it was perhaps you who took the initiative in

approaching Mr. Auer? A. Well, I wouldn't exclude it. I do not remember it. May be that Mr. Mollwo talked to him. That could be also the case, but—

Q. But I suppose it would be right to assume that it was the circle that approached him? A. Yes, that's right.

7563 Q. To become a stockholder of Rigidor? A. Yes, yes. May be, but that's more or less guessing, that he had asked for an investment or so, but that I do not recollect. I think you are right it's more the other.

Q. Because he did take a loan in order to buy this? A. Yes.

Q. A loan that he repaid about two years later? A. Yes.

Q. But he did take a loan? A. He did take a loan.

Q. From Perpetua? A. Yes.

Q. So it was made very easy for him to become a member of the circle, was it not? A. Yes, that's right.

Q. Perhaps you can recall more of the circumstances, because that period, April 1940, seems to coincide with the SCO statement as to the time he became this trustee they speak of. A. Well, according to my recollection, it was not connected in any way with these functions.

Q. I only mean as to the time. A. Yes, it's—I think it's—

Q. The period of time in which it took place. On

7564 page 44 of the SCO November exposé, toward the bottom—you have the exhibits there. Here is the document in the German. A. Page?

Q. Forty-four. A. I see.

Q. I will skip the first two sentences. "Upon being questioned, Sturzenegger declared that in the spring of 1940 before the dissolution of the dividend guarantee agreement, Dr. Rospatt accompanied by another gentleman of the I. G. Farben called on him about this matter." A. Uh huh.

Q. So it seems, does it not, that it was in the spring of 1940 that these gentlemen of I. G. Farben called on you about this matter that led to the Auer trusteeship? Is that right? A. Yes. I only must add that I do not mention the exact time when these gentlemen of I. G. Farben called. That's my recollection that it was about this time. I have

not made a memo or so. Could have been earlier in spring or later. But no doubt you have memos or so in your files that perhaps could refresh me. That's my impression it was about this time.

Q. Yes. But am I right that this document is correct when it says that you declared that it was in the spring of
7565 1940? A. Yes.

Q. And so on? A. Yes.

Q. That was your recollection then and it is your recollection now? A. Yes.

Q. Well, the spring of 1940 must have been a very hectic time in Basle. You were cancelling the dividend guarantee agreement, and you no doubt had extensive negotiations. And at about the same time the capitalization of Rigidor was increased. A. Yes.

Q. And Mr. Auer entered the circle. A. Yes.

Q. I wondered whether putting the two things together you could remember more of the circumstances of Mr. Auer becoming a stockholder in Rigidor. A. Well, I could perhaps say that when this capitalization increase took place that it was, of course, the intention to offer participations in this firm to well known men in whom we had confidence and of whom we could presume that there would be favorable relations afterwards. And I do not remember now, as I told you, exactly how the question of Dr. Auer's participation came up, but I should say that was the
7566 situation from which it developed. That maybe I have approached him. It was certainly talked over with Mr. Mollwo. And as Mr. Auer was known to the firm already —Mr. Greutert especially—as he had a good reputation, and so on, he seemed to be agreeable for this selection.

Q. So, when you named Dr. Auer to these gentlemen of Farben, you were naming someone that you already knew? A. Yes.

Q. And with whom you were doing some business just about that time? A. Yes, he was known to me.

Q. Yes. Now I'd like to return to the question I was asking you very early this morning. The other day when you spoke of the Auer matter, you said there was even a possibility that you had handled one or two of the drafts in connection with the plan. A. That's right.

Q. Now, perhaps you would tell us something about the plan or the drafts. Either would be equally informative. A. Yes. As far as I remember, these gentlemen of I. G. Farben—I think that one was Dr. Rospatt; the other's name I do not and did not recollect but I understood that he was one of the men in charge especially of the South American business—well, they came one day, made a visit in Basle, and then I remember that the fate of certain
7567 companies in South America was discussed. As far as I recollect, these gentlemen of I. G. Farben uttered the wish that the property or the relations they had with those South American companies—I'm not sure whether they are sale companies—anyhow, they were companies related with I. G. Farben—that these companies, or their relation to these companies, should possibly be in some way neutralized.

And they made—I have only a vague recollection what exactly the intention was—but they made suggestions in the direction that perhaps I. G. Chemie or my firm would be in a position to help them to take up contact with these companies or take options—options in favor, I suppose, finally of I. G. Farben—or something like that. I do not remember the exact suggestions, but I have a recollection that the suggestions were somewhat in these lines.

And I further believe to recollect that that was talked over in Basle at such time, that I had a rather doubtful mind and couldn't make up my mind to entangling my firm or to suggest the entangling of I. G. Chemie in this matter. On the other hand, considering the time of this visit and—well, that we had been always on friendly terms with I. G. Farben—and considering further the very difficult negotiations about the cancellation of the contract, I had to my

recollection a hesitancy just to be entirely negative and show the gentlemen the door.

7568 And as our attitude in Basle as to taking I. G. Chemie or my firm as intermediary in this matter was negative, so the possibility came up, was discussed, whether it would not be a lawyer's occupation, position, to do something in the line that they wanted. And as I knew very well that many lawyers in Switzerland with fiduciary companies had carried on fiduciary tasks, so this thought seemed then, I should say, quite natural, and to my recollection then the gentlemen asked us for—if we would give the name and the address of a reliable gentleman, lawyer, who perhaps could do the job and be of service to them.

And so in this connection the name of Dr. Auer, according to my recollection, came up. May be—seems probable—that I suggested the name, and it's quite possible or probable that I had a call with Mr. Auer or that I wrote him. These details I do not recollect. I tried to but anyhow this address that this gentleman had was named to them, and Mr. Auer afterwards agreed to take over this task and to act quasi as fiduciary.

My further recollection is that the I. G. Farben people had prepared or had the intention to prepare and prepared later drafts for agreements. If I am not wrong, between such a fiduciary person and the gentlemen involved in this South American business.

MR. WILSON: Excuse me a moment. When you use the

7569 term "drafts," you are not talking about bank drafts? You are talking about drafts of instruments?

MR. SCHWARTZ: He said drafts of agreements. Didn't you, sir (addressing the witness)?

THE WITNESS: Yes. Is that not clear?

MR. SCHWARTZ: Perfectly clear.

MR. WILSON: I didn't know whether you were aware of that.

MR. SCHWARTZ: He said drafts of agreements.

MR. WILSON: I know he did just then.

THE WITNESS: Yes. I mean by that—

MR. SCHWARTZ: Perfectly clear.

THE WITNESS: I mean agreement not yet in a definite shape.

By MR. SCHWARTZ:

Q. Of course. A. And if I am not wrong, then Mr. Auer got afterwards such texts of agreements and remitted them to the addressees given by I. G. Farben.

Q. Remitted them to the addressees? A. Addressees in South America.

Q. I see. A. And I recollect further that in this connection as I suppose I mentioned Dr. Auer and I had talked to him—

MR. SCHWARTZ: Off the record.

7570 (Remarks off the record.)

By MR. SCHWARTZ:

Q. Go ahead, please. A. Perhaps I may ask you repeat what I have said (addressing the reporter)?

(The reporter read the beginning of the witness' answer as follows:

"And I recollect further that in this connection as I suppose I mentioned Dr. Auer and I had talked to him—")

THE WITNESS: Yes.—letters were exchanged. That I have transmitted one or several letters in this connection to Dr. Auer destined to be handled by him further. May be that Dr. Auer has remitted me once or twice a letter he has got from the other side. I do not recollect how often. I do not think there were many letters, but a few were, I suppose—I believe to remember—exchanged in this business, whereby, as I had given the address of Dr. Auer, I handed them to Dr. Auer.

Well, I do not know whether Dr. Auer has afterwards had direct connection with the I. G. Farben people or whether the whole thing has later on come to an end. I remember

that Dr. Auer once—the date is not clear to me—called on me and said, "Well, we haven't received any answer." Maybe the I. G. Farben people had phoned to me too and asked if there had been answers. Such matters I do not remember the

7571 exact happenings. Might have occurred. But perhaps I may be permitted to add that I always regarded this intervention, if you will call it so, as a purely only personal matter of me in which my firm was not involved, neither I. G. Chemie.

Now, that's about my recollection, which is to the effect that I mentioned that Dr. Auer take over certain functions; that letters were exchanged; and that the matter concerned South America is clear. But, on the other hand, as to further details and what else has happened is something vague, and I am sure that perhaps in the German files there are memos or so which when you submit them to me may help me to refresh my memory.

By Mr. Schwartz:

Q. I am not very clear as to just what the plan was that these agreements would carry out. You mentioned that Farben was desiring to continue the relations with these South American firms, and that they wanted to have these firms neutralized. Now, could you amplify on that? A. I believe to remember that, without mentioning the text of these agreements, I believe the idea was in principle that those companies in South America which formerly had been more dependent on I. G. Farben, to make them more independent, to give the—well, I do not know how the construction was, but there seemed to have existed before rather close ties between those companies and I. G. Farben.

7572 Q. Oh, yes. I see. A. So I understood them. And the intention was to give or grant these South American companies a little more independency, but, at the same time, I. G. Farben wanted to have options or something like that.

Q. I see. A. And, as I recollect, but recollection is vague, these options or certain agreements were then to be drawn between the people of these companies and Dr. Auer.

MR. WILSON: And who?

THE WITNESS: And Dr. Auer. That may be mistaken, and the construction may have been otherwise, but that is my vague recollection of the matter.

By MR. SCHWARTZ:

Q. Is the general idea then that before this these sales companies were either owned by Farben or directly tied to Farben, and now they were to be put so that they were owned by a trustee, and the trustee would give Farben an option so that Farben would keep its relations with the South American companies but they would be less open? Is that the idea? A. Well, it was perhaps in such a line or similar line. I do not recollect the details, but I believe that it was along those lines.

Q. And that there might be options from the stock-
7573 holders of the South American companies to the trustee and then, in turn, options from the trustee to Farben? A. There might be.

Q. That would be— A. I do not—

Q. I was trying to illustrate or explain what the plan might be, how it might work. A. Yes.

Q. Or there might be pledges with the trustee. Some way— A. Some way a closer connection between the trustee perhaps and these companies there.

Q. Yes. Now, you have said there might have been letters to Auer and letters Auer got from the other side, and—well I think that's all you said now. Am I right? Is that about what you remember saying? A. Yes.

Q. And in the SCO memorandum it says one or two letters of the I. G. Farben. A. Yes.

Q. So the letters to Auer would have been letters from Farben to Auer? A. Yes.

Q. And the letters that you passed on to Auer? A. Yes.

7574 Q. And the letters that Auer got from the other side? South America? They would have been the letters that you passed on to Farben? A. Yes, if so, that. I believe to remember.

MR. WILSON: I—

THE WITNESS: Pardon me?

MR. WILSON: Finish your answer.

THE WITNESS: I believe to remember those first letters—clearly to remember that letters from I. G. Farben to Auer were passed to me, but I do not quite clearly recollect if and how many letters corresponding from Auer to I. G. Farben were passed.

By MR. SCHWARTZ:

Q. You are more definite about one or two or so letters from Farben to Auer, but not as definite about letters from Auer to Farben? A. Yes.

Q. I see. But any letters there would have been from Auer to Farben would have been in connection with this South American business? A. I should say so probably, because the I. G. Farben people apparently didn't know Auer before.

Q. I don't understand. A. The I. G. Farben people, these gentlemen, didn't know Mr. Auer's name and address before.

7575 Q. I see. You had brought them together? A. They had no connection. That's the explanation for my handing these letters.

Q. Now, you also mentioned that the question was talked over and that you showed, as you put it, the gentlemen the door.

MR. WILSON: No, he didn't.

By MR. SCHWARTZ:

Q. Did you talk this over?

MR. WILSON: He didn't say he showed them the door.

MR. SCHWARTZ: I am so sorry. I made a note of that.

MR. WILSON: He said under the circumstances he didn't show them the door.

MR. SCHWARTZ: I made a note of the phrase because it was such a picturesque one.

MR. WILSON: Just the opposite.

THE WITNESS: The opposite.

MR. SCHWARTZ: I didn't mean anything by that. I was really concentrating on the talking over. My next question was going to be not about the door but the talking over. I was merely trying to recall it to you (addressing the witness).

THE WITNESS: I see.

By MR. SCHWARTZ:

Q. You mentioned having talked it over, and I was
7576 going to ask with whom you talked it over. That's all.

A. I believe that when these gentlemen came to Basle that Mr. Roesch or Mr. Gadow or both were too in Basle, and that the matter was discussed then.

Q. You believe you discussed it with them? A. Yes.

Q. Which aspect of it did you discuss with them? A. Well, on the aspect that these gentlemen were probably asked by the Farben gentlemen if I. G. Chemie could do something.

Q. I see. Oh, you think they had been asked whether Chemie would do it and you had been asked whether you would do it? A. Please, I have only—

Q. I understand. A. I have only a vague recollection, but I remember quite well discussions took place, and that I joined them. May be it came first I. G. Chemie and put the question or discussed it, and then the gentlemen—and then the matter developed more in this direction I was indicating. But all these details are not clear now in my memory.

Q. Yes. Then in the SCO memorandum it says that you had had nothing to do with the entire matter nor had "he," meaning you, "ever inquired of Auer what had actually

happened." Is that right? If you would like to check it,

7577 please do. Just first check that it is substantially correct. The next to the last sentence on page 44. A. (After examining the document) I see.

Q. But you told us a moment ago that you thought it might have been that Auer called on you to say that perhaps there had been no answer to some question? A. Yes. After thinking over, I wouldn't exclude that. Therefore, I mention it. I am not sure about it, but may be we have talked once on phone that the question came up.

Q. Do you remember having talked with Auer about this matter after it was first settled that he should do it, and so on? A. Well, I should say I have a vague recollection that somehow the question came up: "What has happened? Have they acted?" Or something like that. That may have been the subject or one of the topics of a telephone call or so.

Q. Well, I am trying to ask you to probe whether you remember talking with Auer and whether you got any news from Auer or any information as to what was going on between Farben and South America. A. Well, as I told you, I wouldn't exclude the possibility that I perhaps once asked Auer on the phone, "Have you got a reaction?" or that he perhaps once or twice called and said, "Well, I have nothing received."

Q. Nothing received from—?

7578 A. From South America.

Q. And might he ask you what he should do about it or what he should not do about it? A. Well, that I can not recollect, but just mentioning the fact maybe that he asked. That will undoubtedly be clearer as you take the memorandums that are perhaps at your disposal.

Q. Now, the SCO memorandum—no, I'm sorry—yes, the SCO memorandum mentioned, and I think you did, that it would have been tactically imprudent to have turned them out without giving them the name of an attorney. A. Yes, that's right.

Q. But you didn't just stop at giving them the name of an attorney, did you? You did act as a person who passed a letter or two between the attorney and Farben? A. That is in so far right as there hadn't been a former contact between I. G. Farben and Auer, and so it seemed natural, well, that I perhaps wrote him a short letter or just handed these letters after a telephone call. In so far, I have given more than the name. That's right.

Q. Yes. But was there any reason why he couldn't send a letter to I. G. Farben and they couldn't send a letter to him? A. I don't know. May be that he has afterwards done it. That I don't know. That could well be the case.

7579 Q. You didn't—A. But for the first—just the beginning of the business—as I had given the address, had asked him whether he would be prepared to take over these tasks, so it seemed natural just that I handed him the draft or the letter. At least I remember that has been done.

Q. Have you done this on other occasions? Have you acted as such a friend between Farben or a German and a Swiss fiduciary or lawyer? A. I do not recollect other cases. Only when this question, as I recall, was put before me by the investigators of the Swiss Compensation Office, well, I wouldn't have liked to make an overstatement, and so I said to them, "Well, in a very few cases, once or twice, it may have happened that I handed a letter that was posted to me further." I wouldn't at least exclude that. But it was absolutely exceptional; just a matter of courtesy. Nothing else.

Q. Now, on the reason why you didn't turn them away completely. The negotiations for the dividend guarantee were over by June of 1940 when the cancellation was signed, were they not? A. That's right.

Q. And what reason was there in your mind that might have led you to continue to be a friend to I. G. Farben after that?

7580 MR. WILSON: Mr. Schwartz,—

THE WITNESS: That's an implication—

MR. WILSON: —has this witness testified he had this contact after June?

By MR. SCHWARTZ:

Q. Well, were any of these letters or these drafts passed, do you remember, after June 1940? A. I do not recall the dates. It's possible, but I do not remember that.

Q. Well, can you distinguish between whether they were all kind of part of the beginning of the business and finished up quickly, or that they lasted or were spread out over a long period of time afterwards? A. No, that is not my recollection that they were lasting a long period, but how long exactly I do not recollect.

Q. I appreciate that you couldn't say just how long exactly, but I thought you could say it was all over and done with in a month or two or three months, or it lasted for a year or two or three. A. I do not recollect when it came to an end. I have this vague recollection when about it began, as I told you, in spring, and—Well, it's possible, but I do not recollect it, that a letter may have been handed later on, later part of the year. I can not exclude it as I am not sure about it.

7581 Q. You said the later part of the year. 1940? A. Yes.

Q. I can appreciate that you can't draw the line on the day of June 29th. So you say perhaps the later part of the year. But do you have the impression that it ran into 1941, 1942? A. No, I don't think so 1942. May have been perhaps 1941, but that's all rather vague

Q. Well, let's put it this way. In December 1941 when the United States went to war, that involved the entire Western Hemisphere, so to speak, because naturally the United States and the Western Hemisphere would have made a great impression. So, communications between South America and Farben after that time might have been more significant to you. Do you have the recollection that these letters that you passed were before the United States went

into war or after? A. I have the impression that they were before.

MR. SCHWARTZ: Well, Mr. Wilson, that only divides it as between December 1941, before and after. So, may I ask him a question about between June 1940 and December 1941?

MR. WILSON: Well, understanding that he is giving his best recollection,—

MR. SCHWARTZ: Of course.

MR. WILSON: —or that he doesn't have any. Why—

7582 MR. SCHWARTZ: You shouldn't say in advance he doesn't have any.

MR. WILSON: "Or if he doesn't have any," I said. I don't understand why you are now asking me.

MR. SCHWARTZ: Because you objected to my question about after June 1940, so I would like to know whether we are clear that I may go beyond June 1940. Well, let me try.

MR. WILSON: Are you referring to our colloquy right after we came back from lunch about these dates?

MR. SCHWARTZ: Oh, no. Just a moment ago. Let me try and we'll see what you think.

MR. WILSON: Oh, I see what you mean. No, no. All I meant by that interposition five or six or a dozen questions back, was whether this whole incident occurred after June of 1940 or before June of 1940 or some of it before or some of it afterwards. Implicit in the question which you had asked, to which I interposed, as to which I interposed,—I had the impression that you were concentrating on the whole incident occurring after the date of cancellation.

MR. SCHWARTZ: No, and I have just been asking about that, and Mr. Sturzenegger can only be definite that it ended before the Western Hemisphere, so to speak, went to war.

THE WITNESS: That's my recollection.

MR. SCHWARTZ: So I'd like to ask him about—well, let

7583 me try.

MR. WILSON: I don't see how I have any objection to it any way if I understand what you have in mind.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. So, Mr. Sturzenegger, your impression as to when the passing of letters stopped is that it stopped before December 1941? A. Yes, that's my impression.

Q. So, the period in which the letters may have been passed can be said to have been March or in the spring and December 1941. Now, certainly after June 1940 the cancellation was signed and there was no great reason to be very friendly to the gentlemen of Farben. Is that right? A. That's right.

Q. So if any of these letters were passed after the cancellation, what reason could you have had then to be kind enough to the gentlemen of Farben to pass a letter for them? A. Well, we didn't separate in a quarrel, and then there is the fact I already mentioned that I had given the address of Mr. Auer, so it would not have been understandable to the people if just the day the dividend guarantee contract had been cancelled I would have taken such a rough attitude. And as my functions were very, very limited, it really was the passing of a draft or a letter or two only anyhow, only

7584 very few of these things, so maybe I was of the opinion I couldn't just send this matter back. It seemed just a matter of courtesy and normal relations.

* * *

7628 Q. In that connection, in the section toward the bottom of the page on the trusteeship of Dr. Auer for various companies of Farben, the first sentence says, "According to the Joint Commission Memorandum Sturzenegger participated in discussions in 1940 with regard to the cloaking of firms of Farben in Latin America." Then, the

second sentence says, does it not, "No files on this matter could be found either with the I. G. Chemie or Sturzenegger and Company"? A. Yes, it says that.

7629 Q. Now, haven't we shown you here that Mr. Auer sent you his letters in two copies, one to forward and one for you to keep? A. It looks like that in the letter at least.

Q. Well, then, apparently any copies of Mr. Auer's letters were not found with Chemie or Sturzenegger? A. Yes, that seems so. Otherwise they wouldn't have stated it.

Q. If that is the case, if the SCO was right, have you any explanation as to why they should have found no files on this in your firm? A. No, no explanation.

Q. If you had copies of Mr. Auer's letters—I think we have shown that he sent them for you to keep—A. No.

Q. —Do you remember destroying them? A. No, no.

Q. Or putting them—A. No, I do not remember such a thing. May be that, when I read that, that they have been lost. Otherwise they would have been available.

Q. Well, was it your custom to put matters you discussed with Farben about Auer in a separate private file marked "Hans Sturzenegger, Personal," say? A. No, I don't recollect such a thing.

7630 Q. Are you fairly clear that if there had been any files on the subject on your premises that the SCO would have found them? A. I think so, because everything was open to them and available.

* * *

7646 Q. I hand to you, Mr. Sturzenegger, the German original Exhibit 22. A. (After examining document) I have read it.

Q. Let us, as is the custom, read the translation slowly. First, this purports to be a memorandum for the files, covering the discussions in Switzerland during the period January 5 to January 9, 1942, and at the foot there is, is there not, the words "gez." which probably means "signed," and "Ov." in typewriting? A. Yes, yes.

Q. It is captioned up at the upper left "Latinamerica," and at the upper right is a capital "L" and a capital "N" and a slant mark, and it is dated January 12, 1942.

7647 "Memorandum for the Files covering the discussions in Switzerland during the period from January 5th to 9th, 1942."

The subject apparently is, "Legalization of powers of attorney."

"The Powers of Attorney for the 8 countries

"Brazil

"Argentina

"Chile

"Peru

"Bolivia

"Ecuador

"Columbia and

"Mexico were legalized in two copies each by the relative consulates in Basle, Zurich, Berne and Geneva; one copy of each was mailed from Switzerland as follows:

"Colombia and Ecuador to Cornejo, Lima

"the others to Hamers, Rio

"The Geneva notary Mr. Gustav Martin, rue Corraterie, acted as sender of the first two.

"Attorney and Notary Dr. Auer, Talstrasse 84, Zurich, acted as sender of the others.

"At the advice of Dr. Sturzenegger the notary used in Basle was Dr. Tobias Christ.

7648 "The legalization, in every instance, was made in the French language.

"The Geneva notary Martin gave the impression of particular ability and he is to be noted for possible future use.

"The impression gained of Dr. Auer was also satisfactory. He is willing, if occasion arises, to act also as a mail forwarding agency to Latinamerica.

"Only the trustee contract with Peru has been signed. However, the latest news from Brazil which have reached Dr. Auer indicate that evan there the final signing may be

counted upon. Dr. Auer was requested to inquire in Rio by cable.

"As regards funds, Dr. Auer has so far received only an expense advance from Peru, but not the compensation to which he is entitled in accordance with the trustee contract. Dr. Auer will now present his statement to Peru and will at the same time remind them to remit his compensation.

"Inasmuch as we are very much interested to keep this contact open and, on the other hand, Dr. Auer does not now receive the salary as trustee which, if all eight contracts had been concluded, was originally envisaged at approximately sfrs. 4,000, we have asked Dr. Sturzenegger to promise him a yearly salary (retainer) of between sfrs. 1500 and sfrs. 2000, against which any salary (retainer) amounts which will be received from Latinamerica shall be set off. In this manner we hope to keep alive Dr. Auer's interest in this relationship

7649 and to be able of using him possibly for the transmittal of mail."

And then "gezeichnet" or "signed," "Ov." A. That is a fair translation, I should say.

Q. Right. Then it says, "Copy to the Legal Department," I think. A. Yes, that's right.

Q. Now, first, Dr. Sturzenegger, does this refresh your memory as to any part of any discussions in Switzerland in January 1942 as to legalization of powers of attorney, as to the sending of these powers to eight countries, as to the use of Dr. Tobias Christ at your advice, as to the other subjects mentioned in the memorandum? A. No, it doesn't refresh my memory. The only point on which I am now refreshed—it is about th. 4,000 francs. I remember now that was the sum that may have been discussed when Dr. Auer was approached for the taking over of this fiduciaryship.

Q. The 4,000 franc figure you remember? A. Yes, that I remember now.

Q. It was contemplated that he would make 4,000 francs? A. About the sum, yes.

Q. All told? A. Yes.

Q. I see. Well, does it refresh your memory as to
7650 what purport to have been very elaborate ceremonies? There were powers of attorney legalized in four cities, Basle, Zurich, Berne, and Geneva, and I suppose they were the consulates of these eight countries. A. Uh-huh.

Q. Do you remember anything of such ceremonies, legalization of powers in all these consulates? A. No, no; it is obvious that I haven't been there and haven't taken part in these visits.

Q. I see. Well, apparently several notaries participated and there is a statement there that at the advice of Dr. Sturzenegger the notary used in Basle was Dr. Tobias Christ. Now, do you remember anything about Dr. Christ being involved or your suggesting that he could be used? A. No, but that is highly probable, that when I was asked to give them the name of a reliable notary public that I should have mentioned our old connection Tobias Christ.

Q. He has worked for your firm on your affairs often? A. Yes. He is, I should say, one—nearly since the beginning he was very well acquainted with Mr. Greutert. Already before my time he has acted, when occasion arose, as notary public.

Q. Uh-huh. He was your agent, was he not, for the receipt of dividends on the Chehamji dividend guarantee agreement?

7651 A. Exactly. That is all right, yes.

For the same reason, because he was well known to us, so it was natural if any such task came up to mention his address.

Q. Now, apparently only one contract had been signed, with Peru, and so Dr. Auer wasn't making much money—A. Uh-huh.

Q. —and so it says, "We have asked Dr. Sturzenegger to promise him a yearly salary (retainer) of between sfrs. 1,500 and sfrs. 2,000." I suppose that means 1,500 to 2,000. A. Yes, it means "to."

Q. Yes. Do you remember anything about being asked to give or giving Dr. Auer a yearly salary or retainer of some such amount? A. No, I do not recollect it, and I don't think that we have given him, but I couldn't swear to it without having had recourse to the files. I don't think so.

Q. Did you ever have him on some yearly basis? A. No.

Q. Did he do work for your firm for which you gave him a yearly payment? A. No. He perhaps, when a special occasion arose, just that he had to do some work for us—then he would have sent his Honorar-note for the specific purpose. He was not on a retainer basis with us.

Q. You say you don't think you gave him that although

7652 you couldn't swear to it? A. Yes.

Q. Are you fairly definite on that? A. Well, it is just as I stated it. I have the impression, on reading this, we haven't given him, but I am not so sure that I could make a definite statement.

Q. Well, I am curious because I don't see how you get the impression from this that you didn't give it to him. A. Sure, sure, but because it does that, in trying to strain my memory I believe that I would be able to recall it. But as I told you, I am not so sure that I could make a definite statement.

Q. You see, I think I can almost tell you that you didn't give him that retainer. A. Can you? Because—

Q. I think I almost can. A. I see.

Q. And I may show you a document that may suggest that. A. Surely.

Q. But I am so curious as to why this, which suggests that you did give it to him, should recall to your mind that you didn't give it to him. A. No, it is just as I told you. I believe that if we had given him, at least have given him perman-

ently or for a long period or so, a certain sum, about that amount—I believe
7653 that probably I would recollect it. It is just my impression, and therefore I draw this conclusion.

Q. Now, this also purports to show that Dr. Auer met Farben people face to face. A. Yes.

Q. Or at least that it wasn't only you that met Dr. Auer. A. Yes.

Q. Because it says here, does it not, "The impression gained of Dr. Auer was also satisfactory." A. Yes, yes.

MR. WILSON: Were there two copies of the German of 22, Mr. Schwartz?

MR. SCHWARTZ: One, I think.

MR. WILSON: Was there another copy of this document?

MR. SCHWARTZ: No.

MR. WILSON: Not similar to 21?

MR. SCHWARTZ: Not similar to 21 where we have the photostat and the German.

By MR. SCHWARTZ:

Q. Do you remember any meetings in which Dr. Auer met Farben people face to face? A. No, I don't remember that, sir. I rather believe that I was not a party of such discussions. It may be that they went to Zurich and approached him personally, but that is
7654 just guessing.

Q. Do you remember if Dr. Auer ever had any connections with Farben about acting as a mail forwarding agency in connection with Latin America? A. No, except this specific matter. But I do not know whether he has afterwards sent other letters directly to I. G. Farben. I have admitted this possibility.

Q. Do you remember whether at one point, say after this memorandum in 1942, you stepped out of the arrangement and the mail forwarding was done directly between Latin America, Auer, and Farben? A. I do not remember any such special moment or such a change. According to my

memory, just the matter dropped in some way, or there was nothing else that I could remember that occurred. That is my recollection.

Q. Now, do you remember whether trustee contracts with countries other than Peru were ever signed? A. No, no, I have no recollection whatsoever.

Q. I suppose you don't even remember that the trustee contract with Peru was signed. A. Well, I do not remember that, but on reading that, I have the impression that it must have been done. But I have no independent recollection.

Q. Does this document help you to remember that contracts with all the countries were never signed, or that

7655 some of them didn't sign, or perhaps to remember that ultimately all of them were signed? A. No, it is very vague. I believe to have stated before that I am under the impression that Mr. Auer didn't get further reactions, that is all.

Q. Well, did that mean that as to the countries where he didn't get them signed, that Farben didn't have the control that it was trying to have? A. Well, I am not in a position to make a statement as to that. I really do not know how the matters were left ultimately.

Q. Well, because, you see, as we understand it, it didn't depend on the signature of the contract for relations to be maintained between Farben and South America. There were both contracts which could be signed by Dr. Auer and there were also pools among the shareholders which had some effect, even without the signing of this contract. A. Uh-huh.

Q. So I am trying to see whether you can remember any distinction between what Farben got under a signed contract or without a signed contract. A. No, I have no recollection whatsoever.

Q. Uh-huh. Going down the memorandum and pointing to the specific countries and names, these eight countries, does

that help you to remember that only eight were involved, or
7656 that more than these may have been involved in this affair? A. It doesn't help me. I don't think that others were involved, but I cannot say that.

Q. Then, going down a little further, it says, "One copy of each was mailed from Switzerland as follows:

"Colombia and Ecuador to Cornejo, Lima." A. Yes. And what is the pending question, Mr. Schwartz?

Q. Cornejo, Lima—does "Cornejo" recall anything to you? A. No.

Q. A Mr. Cornejo? A. No, not at all.

Q. Have you ever done business with a Mr. Cornejo? A. No, not to my recollection.

Q. The others, it says, were sent to Hamers, Rio. I think we had the name of Hamers on an earlier document. A. Yes.

Q. Does this help you further, that Hamers was in Rio? A. No.

Q. Then the Geneva notary, Mr. Gustav Martin. Is Mr. Gustav Martin known to you in any connection? A. I remember his name. If I am not mistaken, it is that he is a very well known, first-class lawyer and notary public in Geneva. I do not know him personally.

Q. Has he ever done business with your firm?
7657 A. I am not sure whether in a matter he has been—purely Swiss matter—has been the correspondent lawyer—or how would you put it in your language—of another lawyer we have. I think so, if it is the same.

Q. Has he ever been a customer of your firm? A. No.

Q. Has Dr. Christ ever been a customer of your firm? A. No, I wouldn't say customer. It may be that just he left, perhaps, a short time his Honorar with us.

Q. His what? A. Well, what he has to require for his legal advice or for his work as a notary public. It may be that such small amounts were left temporarily with my

firm or the predecessor, but I couldn't say he was a customer.

Q. Do you mean his fees or money he held for his clients? A. No, it is his fees.

Q. You mean he may have kept his fees on deposit with you? A. That may be, for a short time. I wouldn't exclude it. I do not remember such happening. That could be the case.

Q. Has he ever kept with you money that he had for his clients? A. Not to my recollection.

7658 Q. Is he located very close to you physically? A. No. Well, in Switzerland, in our small towns, all things are near together. But I should say ten minutes' walk.

Q. But you have used him frequently over the years for notarization of documents? A. Yes, yes, surely.

Q. Am I right? I have seen even official Chemie documents notarized by Dr. Christ. A. That may have been the case.

Q. I call your attention to this initial opposite the middle of page 1 of Exhibit 22 (indicating). A. Which one?

Q. Both of them, or the whole thing together. Do you make that out? A. No, I can't.

Q. I see. We have translated that again as "V.R." which might stand for von Rospatt. A. Is it similar to that (indicating)?

Q. To the—A. To the other one.

Q. On 21? A. Well, it looks a little bit—

Q. A little what? A. A little like that. It is not known to me. I am not familiar with it.

7659 Q. Now, do you remember Mr. Overhoff coming with Mr. von Rospatt or with another to Switzerland in 1942, in January? A. No, I remember just this first visit, and I think it was this Mr. Overhoff—if you have now mentioned the name; I didn't recall it before— who accompanied Mr. von Rospatt. I wouldn't exclude that these gentlemen

have visited Switzerland, Basle, Zurich, later on, but I do not recollect such a visit.

MR. SCHWARTZ: I hand to the reporter for marking a document in German and the translation, dated 18 April 1942.

(The document above referred to was marked for identification as Defendants' Exhibit No. 23-18624.)

MR. SCHWARTZ: Mr. Wilson, I have only one translation and one original. You may have noticed me separating another piece of paper, and it is a copy of the translation in longhand, so you may have that to serve temporarily. There is the translation I had marked, and there is the German (indicating).

MR. WILSON: I hand back to you the typewritten German text and the pen-written English translation.

MR. SCHWARTZ: We won't use that pen-written one henceforth because the one you have, which is marked, is, I hope, merely a typewritten version of it.

MR. WILSON: I take it this is not one I can keep, though.

MR. SCHWARTZ: No, sir, because all we have is this
7660 pen-written one. If you would like to keep the pen-written one temporarly before you while we are talking about it, I think it is the same. If you compare them for a moment—

MR. WILSON: Which are you going to have before you?

MR. SCHWARTZ: I would rather keep the marked one before me.

MR. WILSON: I'll swap with you.

By MR. SCHWARTZ:

Q. And now, Mr. Sturzenegger, I hand you the German text of No. 23.

MR. WILSON: Suppose I read the typewritten translation again while Mr. Sturzenegger is reading.

MR. SCHWARTZ: Yes (handing document to Mr. Wilson).

THE WITNESS (After examining document): I have read it, Mr. Schwartz.

By MR. SCHWARTZ:

Q. Now, this purports to be just a memorandum. It isn't headed anything except "Betrifft," which means "Re." A. Yes.

Q. But up in the upper left it says "Lateinamerika" and in the upper right, "18 April 1942." A. Yes.

Q. Let me read the English slowly:

"Re: Travel to Switzerland.

"Dr. Auer/Pool agreement.

7661 "Please arrange with Teerfarben A.G. that payment to Dr. Auer will be made by Teerfarben as for advocates fee.

"As Dr. Auer could not receive any payment from South America. The following amounts are to be paid:

"Single payment of Sfrs. 1500- (if in the course of the following years further payments will be made depends on the development of the circumstances.)

"Furthermore:

"Refunding of expenses which Auer had in connection with the Pool agreement. Auer received a single payment on account of Sfrs. 500.- from Peru.

"It is unknown if such amount has been consumed."

And then there appears some longhand which might be a signature, and I call your attention to what we think is a similarity between that "O." or "Ov."—A. Looks like it.

Q. —and the "O." or "Ov." on Exhibit 21. A. Yes, that's right.

Q. And then there is some other writing further down. There is some writing of what appears to be Dr. Auer's address, "Dr. V. Auer, Thalstrasse 83, 57790." A. Yes.

Q. And then, over on the left, there is some writing that says—and can you make this out? It begins with "k-r-"

7662 A. "e."

MR. WILSON: What is this?

MR. SCHWARTZ: That is not on the translation, Mr. Wilson.

THE WITNESS: Have you found it out?

By MR. SCHWARTZ:

Q. Well, I would prefer that you could make it out. Then there is something that says, I think, "1,500 francs," in writing. A. Yes.

Q. With an arrow pointing to Dr. Auer's name. A. Yes, that's right.

Q. Then there is an initial that—can you make that out? A. No, but doesn't it look like one we have seen before?

Q. You are right. Doesn't it look like the initial that we translated as "K" on Exhibit 20? A. Yes.

Q. And I call your attention to some typewriting that I forgot to read in translation (indicating). That would indicate, would it not—it says, "Herrn Direktor Dr. Kupper," and its placement on the sheet would mean, "Copy to Herrn Direktor Dr. Kupper"? A. Yes.

Q. This, Dr. Sturzenegger, is the document I was
7663 referring to when I said a moment ago that I could probably show you that you didn't pay Mr. Auer that yearly retainer of 1,500 Swiss francs. This purports to show, you see, that Teerfarben was to be requested to pay him 1,500 Swiss francs; does it not? A. It looks like that.

Q. Yes. A. Well, that seems to be an internal memorandum, and so, of course, it is not an evidence for the the event or possible carrying through of such suggestion.

Q. That's right. You are perfectly right. So we have seen a document which purported to say that you would be asked to pay him a yearly salary of 1,500 or 2,000 Swiss francs—A. Yes.

Q. —and that was dated, was it not, January 12? A. Yes.

Q. That was Exhibit 22? A. Yes.

Q. And here is a document dated in April '42. A. Yes.

Q. Which purports to say that Teerfarben would be asked. A. Yes.

Q. Now, perhaps you can remember something further about a request that you pay, and then the fact that you didn't pay, or that payment might be made by someone else.

7664 A. No, there I do not remember anything. I do only remember what I said already, that I don't believe we have paid it. That is the only thing I can remember.

Q. Do you remember being asked and refusing? A. No, I do not remember that.

Q. You don't even remember being asked to pay Dr. Auer? A. Not even that.

Q. Do you remember that he eventually got paid by some means or other? A. No, I have no idea. I am not sure whether he got paid. I have no idea.

Q. Was Teerfarben your customer in about 1942? A. Well, I cannot recollect. Haven't we made out the dates when the Teerfarben participation was sold? And I do not believe that afterwards they were customers. I am not absolutely sure. I don't think so.

Q. Now, the Teerfarben we talked about several days ago was Teerfarben, Zurich, was it not? A. Yes, surely.

Q. And I have been assuming, and I suppose you have, that the Teerfarben mentioned here is Teerfarben, Zurich. A. I suppose so, because that would be natural in so far as the payment had to be made in Swiss francs and at Zurich.

Q. Do you remember the mention of Teerfarben, Zurich in connection with this whole transaction at all?

7665 A. No, not at all; not in the least.

Q. Now, these last two exhibits are dated January and April 1942, and the other day when we closed, on Thursday, I think you had distinguished between the period up to December '41 when the United States went to war, and the period after, and I think you said that your recollection was that these letters that passed between you and Auer and Farben passed before the United States went to war, as against after. A. Yes.

Q. Do these two exhibits that you have last seen, 22 and 23—do they help you as to whether your connection with Auer and Farben lasted beyond the time the United States went to war? A. In this matter, I think—

Q. In this matter. A. No, they don't help me, but after having gone through and seeing these documents, I must, it seems to me, draw the conclusion that I was, as to the exact time, mistaken, because it was my recollection that before the end of '41 the matter was in some way dropped or ended. Well, it seems that it was carried on a little bit further. How long I do not recollect.

Q. Do you remember, perhaps, this helps you remember that the matter continued, that the connection with Auer and Farben in this matter continued into '42 and perhaps '43 and '44?

7666 A. No, I do not recollect. I really don't know how long.

Q. Uh-huh. A. But I don't think that it lasted long after this.

Q. Do you remember whether after Dr. Auer received his 500 advance and after he was supposed to get more money by whatever method, that he ever did anything for which he was supposed to get still more money? A. No, I do not remember such a thing.

* * *

7731 MR. SCHWARTZ: And I'd like to ask you then, directly, Mr. Wilson, if we give you a list of people whom we believe to be the shareholders of the South American companies involved in the Auer matter would you search or cause to be searched the Sturzenegger books to see whether loans had ever been given them?

MR. WILSON: I'll consider the question.

MR. SCHWARTZ: I take that for a refusal to agree, Mr. Wilson.

MR. WILSON: It is an inaccurate conclusion on your part.

MR. SCHWARTZ: I must, nevertheless, so take it, and, of course, you can disagree.

By MR. SCHWARTZ:

Q. So, without a list of all the names of the shareholders you would have no way of instructing your bookkeeper to search as to whether you had given loans? A. Well, that would be difficult. More difficult.

7732 Q. Well, it would be impossible, would it not? A. Well, I might have recourse to the memory of the chief bookkeeper too. Ask him if he remembered anything of that kind during the space of time involved, and so on. Just—

Q. I see. Who is the chief bookkeeper? A. That would be Mr. Werder.

Q. I see. And you might ask him whether there were any loans given to South Americans at that time? Is that the idea? A. Pardon me?

Q. And you might ask him whether—A. Yes.

Q. —any loans were given to South Americans? A. Yes. That would be the principal question.

* * *

7740 Q. Suppose you rather try to remember who came to Basle to negotiate the dividend guarantee agreement, and who you therefore might have met in connection with the Auer-von Rospatt matter.

MR. WILSON: Wait. You mean the dividend guarantee agreement?

MR. SCHWARTZ: Yes. We have established that they were

7741 substantially simultaneous, in the spring of '40, April '40, May '40, June '40.

MR. WILSON: You mean to negotiate the cancellation of the dividend guarantee agreement.

THE WITNESS: Between I. G. Farben and I. G. Chemie.

By Mr. Schwartz:

Q. Yes. And substantially simultaneously the Auer-von Rospatt matter came up, so suppose you think of it in terms of that period and those topics, rather than name after name, and tell us who was in Basle for the negotiations of the cancelation and then we will be able to ask you whether those people might have met with you on the subject of the Auer matter. A. Well, I should say Mr. Krueger and Mr. Gierlichs, these two.

Q. Those two. Others, perhaps? A. Well, as to the negotiations for the cancelation of the dividend guarantee contract, I should say these two chiefly were concerned. It may be that on occasion once Mr. von Knieriem was in Basle, too, but it can be perhaps in autumn '39, and that, in one of the phases, at least.

Q. I was thinking of the spring of 1940. A. Yes.

Q. That was a very busy period for I. G. Chemie, was it not?

7742 A. Pardon?

Q. The spring of 1940? A. Was what?

Q. Was a busy period for I. G. Chemie. A. Well, of course, at least an important period in our eyes.

Q. You were negotiating the cancelation of the dividend agreement. A. Well, these negotiations, of course, go back a long time, and it was just—

Q. They culminated at that time? A. Yes, the final—

Q. They culminated then? A. Yes.

Q. And you also entertained in Basle several visitors from America who came to talk to you about that? A. Well, that was, I should say, at least in my eyes, a matter of minor importance, and as neither I. G. Chemie nor my firm were active in this matter, I think—

Q. What matter do you mean? A. Were active.

Q. In what matter? A. This South American business.

Q. No, I say at that time. A. Oh, I see.

7743 Q. I say at that time you entertained visitors from America in Basle. I meant, I suppose, in connection with the cancelation. A. Well, I try to remember whether—

Q. Well, I won't ask you to strain because I think it is notorious.

MR. WILSON: Hugh Williamson.

By MR. SCHWARTZ:

Q. Mr. Williamson, and Mr. Duisberg, and Mr. D. A. Schmitz. A. Yes, sure.

Q. They were involved about this time? A. About that time, yes.

Q. And there were at least the two Farben men you mentioned, Gierlichs and Krueger? A. Yes.

Q. And certainly also Mr. von Rospatt, at that time, you say, in the Auer matter? A. Yes.

Q. And so there were people from Germany there at that time, and people from America? A. Yes.

Q. And were there others? That is what I would like you to strain your memory about. A. Not to my present recollection, Mr. Schwartz.

7744 Q. Well then, let me try you with some names. Mr. Waibel? A. No, I cannot remember.

Q. We have already covered Mr. Overhoff, haven't we? A. Yes, we have covered him.

Q. Mr. Rong? A. Mr. Rong was relatively often in Basle as he used to negotiate with Swiss Bank, Credit Suisse, and all the banks, and when financial matters, normal financial matters, came up, as for instance this combined credit transaction, you remember, Stillhalte Kredite and so on, I think that was chiefly carried through technically by Mr. Rong.

Q. The one mentioned in the SCO November document? A. Yes. And Handelsgesellschaft and so on.

Q. I see. A. I cannot exclude them having been present about this time.

Q. We do have Krueger and Gierlichs and Rong maybe? A. Yes.

Q. And Duisberg and D. A. Schmitz and Williamson, those last three from America? A. Yes.

Q. And we have—did you say that you remembered that Frank Fahle was there for those cancelation negotiations?

A. No, I don't think so. He just passed by, perhaps,
7745 or had some other thing—I do not remember—then. But sometimes he was in Basle.

Q. And a Mr. Walloth, W-a-l-l-o-t-h, of Farben? A. Walloth?

Q. W-a-l-l-o-t-h. A. Not to my recollection.

Q. Now, with all these people in Basle at about that time, perhaps you can strain your memory as to how many of them or which of them might have participated in any way in the South American matter. A. Well, I told you, Mr. Schwartz, my memory is very vague. I cannot remember others than Overhoff and von Rospatt in connection with this special matter. I cannot exclude the possible presence of others, but I do not recollect it.

Q. I see. Well now, these are Farben names and American names. Now, names in Chemie. At that time, of course, the leading figures in Chemie were Roesch and Gadow. A. Yes.

Q. And then there was always Iselin, and August Germann. A. Yes.

Q. And, of course, you yourself. A. Well, I was at such time, before June 29, not a member of the board, as you are aware.

Q. Yes, but I think you described your becoming a member at that time as a natural development from the death
7746 of Mr. Greutert. A. Yes.

Q. And your former contacts with Chemie. A. I should say I attended different meetings by invitation.

Q. I see. And I am sure it must have been discussed before June 29, 1940 that you would become a director at that time. A. Yes, of course.

Q. Yes. So for a little time, at least, before June 29, you

were, so to speak, a director designate. A. Well, call it so, but I had no official function.

Q. Now, of these names that were in Chemie at that time, Roesch, Gadow, Iselin, August Germann, which of those people participated in meetings on the Auer matter? A. I think I have told it before, that in my recollection it is Roesch and Gadow.

Q. I see. The other day you thought only that you might have talked to them. A. Yes.

Q. Or that they might have represented Chemie when Chemie was asked to do this by Farben. A. Yes.

Q. Are you a little surer of that? A. I am not sure, only thinking that those two gentlemen

7747 were daily occupied with I. G. Chemie matters, whereas Germann has his domicile in Zurich and Iselin has his domicile in Basle but was not, well, in a position to attend to daily matters. And so it seems to me highly probable that these first-named two gentlemen, Roesch and Gadow, were present. I am not at all quite sure, but that no doubt you will find. But I think it is very probable that the two gentlemen were present. Maybe a Mr. Brumm, too.

Q. Maybe Mr. Fritz Brumm? A. Uh-huh.

Q. Yes. This morning you used a phrase that struck me as curious, Mr. Sturzenegger. You were talking about the meeting with von Rospatt and you said that it might even have been in the morning and the afternoon, and it struck me that you hadn't said such a thing before, and I wondered whether you could strain your memory about the meeting with von Rospatt, as to whether it ran all day or whether there was one meeting in the morning and one meeting in the afternoon, or what. A. Well, I think that was more guessing in trying to answer your question if I remembered how long the meeting was, whether it was a short one or a long one. Wasn't that about your question?

Q. If you remember it, it is probably so. A. And so—I am not sure. It may be that it had been discussed once, and then discussion interrupted and

7748 postponed. It is difficult to say. It lays far back and I have no independent recollection about that.

Q. You perhaps remember that there was a meeting and then another meeting, and then a meeting in the morning and the afternoon, and then afterwards, other meetings? A. No, that I don't have. I should say it is possible that after the meeting or a meeting with I. G. Chemie that Respatt called me, came into the premises of my firm, but it is too vague. It may be that it hasn't been so.

Q. Yes. Well, perhaps you remember specifically two meetings, one on Chemie's premises, one on your premises. A. No, that is all. I think I am trying to strain my memory too much, and so I am perhaps coming to conclusions which are not at all in accordance with the facts.

Q. Yes. A. I remember discussions in Basle and believe to remember that Roesch and Gadow were involved—not clear, but I should say it is probable. But I do not remember all the other details you were questioning me.

Q. Uh-huh. Do you remember, perhaps, whether there was any particular occasion to change the locale of the meeting, that you sat in one meeting on one premises and then you said, "We must now move over to the other premises," because something came up? A. No. That was perhaps only the thought, but I am

7749 again indulging in guessing, that when I. G. Chemie had declined to take over this—such task, that perhaps the gentlemen came and asked me. That would have been more or less natural, but I am not sure about it. It is guessing.

Q. Perhaps it was the other way around, that they met with you and then there was a reason to go to I. G. Chemie. A. It could be the case.

Mr. Wilson: You say it could be the case?

The Witness: Could also be the case.

Mr. Wilson: But that is speculating?

The Witness: It is all speculating. Of course, I think I tried to make it clear.

By Mr. Schwartz:

Q. I am not clear about what you said about the Americans. Let me just ask you again, if you will bear with me. Do you remember whether Duisberg, Schmitz and Williamson had anything to do with the Auer matter? A. No, I don't think so.

Q. You couldn't be absolutely definite about it though, could you? A. I am not absolutely definite, but I don't think so.

Q. Did you know before this Auer matter that D. A. Schmitz had been a stockholder in these South American sales companies of Farben? A. No, didn't know anything about that.

7750 Mr. Schwartz: I hand to the reporter for marking a document bearing the date of March 30, 1940.

(The document above referred to, consisting of a German original and translation, was marked for identification as Defendants' Exhibit No. 25-12777.)

Mr. Schwartz: I hand to Mr. Wilson a photostat and translation.

By Mr. Schwartz:

Q. Mr. Wilson having both the photostat and the translation, I needn't give him the original, so will you please read, Mr. Sturzenegger, the German text of Exhibit 25. This piece of paper on top is not part of it. A. (After examining document) I have read it, Mr. Schwartz.

Q. Mr. Sturzenegger, do you say that this purports to be a memorandum of a meeting, memorandum with the typed signature "Ov." A. Yes.

Q. Which we take to be Overhoff? A. Yes.

Q. And of a meeting on March 28, 1940, in Basle. One meeting was only in the morning with you, at which you said that neither Chemie nor yourself had found a company

in Switzerland to act as the trustee, but that you deemed it
7751 possible to find an attorney or notary public under certain conditions whereby the financial risk of the trustee would be limited and he would have the right to consult with a competent authority, and further, that the trustee should have financial backing from you, which might be given through your bank or another company in close contact with him if you were covered by Farben or Chemie, and that to clear up the point of financial backing a second meeting was agreed upon for the afternoon in the office of Chemie, and that at this second meeting there attended Roesch, Gadow, Duisberg, yourself, Frank-Fahle, Gierlichs, and the author of the memorandum, and that at this second meeting Dr. Duisberg, partly supported by the gentlemen of Chemie, and especially by Roesch, advised against the plan as it then stood, and that the loan question was also discussed at this afternoon meeting. And it says that you and the gentlemen of Chemie deemed it possible to find a Swiss big bank which would give such loans if it received security or securities from you, and that you were prepared to provide such security. The German word is "Ruecken-Deckung." A. Yes.

Q. Which means "backing" or "rear support"? A. Yes.

MR. WILSON: Is that the word both times in the German?

MR. SCHWARTZ: It may be. In my translation it is only
7752 mentioned the second time.

By MR. SCHWARTZ:

Q. And that the details of the loan or the transfer were not discussed to avoid further complications; and that you or somebody whose initials were "St.," whose name began with "St."—A. Yes.

Q. —saw no difficulties in assuming a guarantee of the rate of foreign exchange in the form provided in the cases

of Hamers and Marquardt; and that if "we"—the authors of the memorandum—give you, Sturzenegger, a telephone call, you will immediately look for a trustee or trustees, but that you thought it might be expedient that prior to the call "we," the authors of the memorandum, give you a new draft, outlining the points made above. And there is a reference to numbers that covers the financial backing of the trustee and that the trustee should have the right to consult the competent authority. A. Uh-huh.

Q. And lastly, that Dr. Duisberg was prepared to inform Herr Moll, after Duisberg's return to New York, of a certain address.

Now, Mr. Sturzenegger, having read this—first, my rough summary was fairly correct, was it not? A. Pardon me? Yes, fairly correct.

Q. Having read this, Mr. Sturzenegger, will you tell

7753 us all you can now remember about the meetings you had on the Auer matter. A. Well, it is not much more, but it refreshes me in so far—well, apart from the gentlemen I had in my recollection, that were only present these two gentlemen, Overhoff and von Rospatt, there were, at the same time, it seems, others present, which I didn't recollect.

Q. Do you recollect these others now? A. Well, I cannot say that I have an independent recollection that just these matters were discussed with them but inasmuch as that seems to be an internal memorandum which, of course, is no certain evidence, there are no reasons why there should be, as to persons, misstatements. So it seems to be probable that that was right.

Mr. Wilson: What was right?

The Witness: That several persons were discussing these problems as stated, but I cannot recollect that.

By MR. SCHWARTZ:

Q. Can you recollect now, having read the memorandum, any of the topics discussed at the meetings? A. Well, I recollect what I told you before, that some trustee should be found, some corporation or company or individual acting as such, and that this was discussed. And all the details here—well, it is probable and understandable that they came up, but I couldn't say that I recollected these
7754 details.

Q. For instance, this statement here, that, "Sturzenegger deemed it possible to find a suitable notary or attorney on the basis of the following conditions:"— A. Uh-huh.

Q. "The financial risk of the trustee would have to be limited . . :" and then there is an Item (b), and then No. 2: "That the trustee should have the right (not the obligation) to consult any competent authority about possible questions, arising out of the contractual relationship."

Do you remember that you commented on the basis of the plan and that you made such suggestions? A. No, I do not remember that, but in reading it, it is for me natural to draw the following conclusion, that when they asked me, "Well, do you think that a notary public or somebody like that would do that," I may have answered, "Well, but of course this person must be backed; this person must be secured. You cannot probably ask this person to run a personal risk," and so on.

That is just as I try to put things together, and that seems natural, that if such questions came up, similar reactions would have been given, but I do not recollect them.

MR. SCHWARTZ: Mr. Wilson, would you like to characterize it as speculation, perhaps?

MR. WILSON: I think that is what it is.

7755 MR. SCHWARTZ: I thought you did, and I wondered whether you weren't going to say something.

MR. WILSON: My mouth was open on account of a yawn, I think, Mr. Schwartz.

By Mr. Schwartz:

Q. And then further, that in spite of the guarantees to be provided under (1), about eliminating financial risk, Herr Sturzenegger is convinced that a trustee would still demand financial backing from him, and that he declared that he would be prepared to give such backing through his bank or another company in close contact if he, in turn, were covered by I. G.—which I think means Farben—or I. G. Chemie.

Do you remember such discussions about the necessity of the trustee? A. No, not at all.

Q. With the financial backing or the likelihood— A. No, I don't recall that at all.

Q. You don't remember any discussion at these meetings about financial backing for the trustee? A. No, but I should say, as I stated before, it is highly natural and probable that such questions came up, because when it was discussed, "Well, can a public notary act in such a way," then it is to be assumed that if asked I would have given a similar answer.

Q. Well, do you think it is highly natural as well that

7756 you should have declared that you would be prepared to give such backing? A. No, I wouldn't say that, and I cannot recollect having declared such a thing, and to my recollection, the matter wasn't carried through.

Q. It wasn't carried through? A. It wasn't carried through in such a way, to my recollection, that my firm or I. G. Chemie gave a backing. That is my recollection.

Q. This reminds me of your statements about the carrying through of the transfer of the money to Spain. You told us often that it was not carried through as requested, and then I think we showed, did we not, that it might have been carried through in another manner? A. Uh-huh.

Q. Was this one not carried through as requested, but carried through in another manner? A. Not to my recollection.

Q. Was it carried through in any way at all? A. Yes, in so far, Mr. Schwartz, that Mr. Auer, who was suggested and whose address was given to the gentlemen, took over the task to act as a trustee in this South American matter.

Q. But was anything carried through about backing for the trustee?

7757 A. Not to my recollection.

Q. You said you had no recollection that either your bank or I. G. Chemie gave such backing? A. Yes.

Q. What about another company in close contact with you? Any recollection as to that? A. No.

Q. Or any other company or any other bank? A. Not to my recollection.

Q. You don't recollect, for instance, that you made some arrangement with another Swiss bank to give them security so that they could make certain loans pursuant to this transaction? A. No, I do not recollect such an occasion, Mr. Schwartz.

Q. Skipping the beginning of the afternoon meeting, that is, skipping Dr. Duisberg's part, taking up that paragraph about, "In the discussions of the afternoon the loan question was also discussed," then it says, does it not, "Herr Dr. Sturzenegger as well as the gentlemen of the I. G. Chemie deem it possible to find a Swiss big bank which would give such loans if it received securities through Sturzenegger." And then it says, "Herr Sturzenegger is prepared to provide such security." A. I think that is a fair translation of what is in the memo.

7758 Q. Uh-huh. And does that bring anything to your mind? A. It may have been discussed. Everything may have been discussed. But my recollection is the same, that we didn't do it. As I have told you, that is the best of my recollection. I may be mistaken, but I don't think so.

Mr. Wilson: Mr. Schwartz, for the sake of accuracy, although it is quite immaterial, the word "Rueckendeckung" is twice in that paragraph. One time it has been translated as "securities," and another time as "security."

MR. SCHWARTZ: I will accept that amendment. It is pretty clear that the translator wasn't quite sure and did it one way once, and another way another time.

MR. WILSON: Is that the reason for it?

MR. SCHWARTZ: I am sure I don't know. I don't take it to mean securities in the sense of shares. I take it to mean in both cases some form of security for a transaction.

MR. WILSON: Yes.

By MR. SCHWARTZ:

Q. "Rueckendeckung," Mr. Sturzenegger— A. It is "backing," I should say.

Q. What?

MR. WILSON: "Backing."

THE WITNESS: I should translate it by "backing."

MR. SCHWARTZ: That is a fine word.

7759 THE WITNESS: That is to say, a general term.

MR. SCHWARTZ: That is a fine word.

By MR. SCHWARTZ:

Q. Well, did you ever give backing to any person to give loans or security or to indemnify the trustee? A. Always in this connection, Mr. Schwartz?

Q. Yes, certainly. A. To my recollection, no.

Q. In this connection? A. No, not to my recollection.

Q. You see, there were two types of backing that have been referred to. There is financial backing for the trustee and then there is financial backing for somebody to give loans. A. Yes, I see that.

Q. And I suppose those loans are to shareholders. So did you ever give either type of backing? A. To my recollection, neither to the one nor to the other.

Q. Then we come to the next paragraph, the third from the last in the memorandum, which says, "St.," which I take to be an abbreviation for your name, "sees no difficulties in assuming a guarantee of the rate of foreign exchange in the form provided in the cases of Hamers"—

H-a-m-e-r-s—"and Marquardt"—M-a-r-q-u-a-r-d-t. A. Uh-huh.

7760 Q. Now, I didn't ask you about those two names.

A. You asked me.

Q. In connection with this document, Exhibit 24. A. Yes.

Q. Because we couldn't be absolutely sure that Hamers and Marquardt were the names written in at the end of that. A. Yes, I remember.

Q. Yes. And—

MR. WILSON: Mr. Schwartz, would you desist just for a moment?

MR. SCHWARTZ: I would prefer not to, if you don't mind. Can it wait? Is it about the immediate point I am asking about?

MR. WILSON: Yes.

MR. SCHWARTZ: Yes, I suppose so.

MR. WILSON: Will you look at the German text.

MR. SCHWARTZ: Of this Hamers and Marquardt paragraph?

MR. WILSON: Yes.

MR. SCHWARTZ: Yes, sir.

MR. WILSON: Tell me—I may be quite stupid—where the "St." is.

MR. SCHWARTZ: The third from the last word, but the German construction being so different from ours, the translator, no doubt, thought it appropriate to make it first. It is the third from the last word in the German text of that

7761 paragraph.

By MR. SCHWARTZ:

Q. Is that right, Mr. Sturzenegger, that the third from the last word is "St."? A. Yes.

Q. And my statement as to that paragraph has been roughly a fair translation, has it not? A. Yes, that's right.

Q. Now, I just wanted to mention to you that in Exhibit

24 there were some penciled words that might have meant, and we took them to mean— A. Yes.

Q.—"Hamers" and "Marquardt." A. Yes.

Q. And you translated the first word as— A. "Kurs-garantie."

Q.—"guaranteed rate of exchange." A. Yes.

Q. I didn't ask you specifically about Hamers and Marquardt there because it was so difficult to make out the penciling, but now we have this in typewriting it is perfectly clear. It purports to say that you saw no difficulties in assuming a guarantee of the rate of foreign exchange in the form provided in the cases of Hamers and Marquardt.

Now, what about that, Mr. Sturzenegger?

7762 A. Well, I again must say I have no recollection. It lays far back. In the details—discussion—anything may have come up in the discussion. I do not recollect having taken over such a guarantee. I may be mistaken, but I don't believe that.

Q. Yes. What do the names Hamers and Marquardt mean to you? A. Nothing.

Q. Nothing at all? A. Nothing at all.

Q. Do you place them in any context? A. Well, after having read these memos and letters and so on, it seems to me that these two belonged in some way to one or the other of the South American companies, but that is a conclusion.

Q. It doesn't say that. It just says you saw no difficulties in assuming a guarantee of the rate of foreign exchange in the form provided in the cases of Hamers and Marquardt. A. It doesn't say more than that. Now, what is the pending question?

Q. Now, how do you conclude or have any feeling about there being Hamers and Marquardt—about Hamers and Marquardt being in this South American group? A. Well, we had the name here in the pencil writing.

Q. On Exhibit 24?

7763 A. That makes me assume that.

Q. I see. What is such a guarantee of the rate of foreign exchange, Mr. Sturzenegger? A. Well, in my opinion, it can be a guarantee against a possible depreciation of a special currency. Yes, I think that covers it roughly.

Q. And can you tell us what connection such an agreement might have had with the Auer matter? A. No, that would be pure guessing.

Q. Uh-huh. You can't be sure, can you, that you did not take over such guarantees? A. I can only state, according to the best of my recollection—it lays far back and the whole thing was then not considered as very important—I do not remember all details and phases of the discussions.

Q. You could check those names against your books? A. I could check the books as to whether these names are somewhere in the books, and in what connection, but it seems to me it could be possible.

MR. SCHWARTZ: And for the record, Mr. Wilson, I will ask both you and Mr. Sturzenegger whether you would undertake to check or have the books checked, to see what they disclose about Hamers and Marquardt.

MR. WILSON: Same response as this morning in respect to a similar inquiry.

7764 MR. SCHWARTZ: You will consider it; is that right?

MR. WILSON: That's right.

MR. SCHWARTZ: I will say the same thing, just for the record, I take that to be a refusal.

MR. WILSON: To which I will make the same response I did at that point.

By MR. SCHWARTZ:

Q. Going on to the next paragraph, Mr. Sturzenegger, it says: "If we give him a telephone call, Herr Sturzenegger will immediately look for the trustee or the trustees. But he thinks it might be expedient that prior to calling we give him a new draft, outlined with consideration of the

supplementary points mentioned under 1) and 2) above."

Now, "1) and 2) above," you will note, refer to the guarantees that the financial risk of the trustee would be limited and the trustee would have the right to consult any competent authority about possible questions. Does that stimulate your memory as to these drafts that you have told us you handled? A. No, it doesn't. It only causes me to assume that amended or changed drafts possibly have been handed to me in order to be sent or handed to Mr. Auer.

Q. In order, perhaps, to submit them to Mr. Auer? A. Yes, to submit them.

Q. To see whether he would be willing to take them?

7765 A. Yes, but that is speculation.

Q. You don't remember any such thing? A. It is probable that it has been handled in such a way.

Q. You did remember that you had handled drafts of the agreement. A. Yes, I think I have stated that.

Q. Does this help you to remember, perhaps, whether there were any telephone calls between you and Farben on this transaction? A. No, I do not remember such calls, but I assume that such a call was made. At least, Dr. Auer's name was given them and according to this memo, the name was not yet found then while this negotiation took place. So it is a conclusion again.

Q. Going on to the last paragraph: "Herr Dr. Duisberg is prepared, after his return to New York, to inform Herr Moll of the address of the person or persons designated as trustee or trustees so that Herr Moll can cause the various companies to get in touch with such trustee."

Now, how about Dr. Duisberg and his connection with this matter? A. No idea. I do not recollect that he had something to do with the South American business, but I cannot judge that.

7766 Q. You don't even remember that he was at any of these meetings on the South American business? A. Well, not even that. As I told you, I remember that at

about this time—and you mentioned it—these gentlemen from America were in Basle.

Q. Uh-huh. A. And it seems, according to this memo—he seems to have taken part in at least part of these discussions. I cannot recollect.

Q. In connection with the mention of his name in the last paragraph, I would like to call to your attention the beginning of the afternoon meeting, where it says, after it gives the names of those who were present, "The whole plan was again discussed in detail." Do you have the German text there? A. Where is it about?

Q. After the part: "Messrs. Roesch, Dr. Gadow, Dr. Sturzenegger, Dr. Duisberg, Dr. Frank-Fahle, Dr. Gierlichs and myself were present."

It says, does it not, roughly in translation:

"Thereupon, the whole plan was again discussed in detail. Herr Dr. Duisberg, partly supported by the gentlemen of I. G. Chemie, especially by Herr Roesch, advised strongly against carrying it out, since the intended safeguarding would really constitute a deterioration, especially in the case of one of the South American countries entering the war and any
7767 investigations resulting therefrom. According to his opinion, the only right way would be to pool the shareholders overseas according to his proposed draft and to cut all connections to Europe. Our counter arguments were explained in detail, especially referring to the fundamental difference in the conditions between North and South America."

That purports to show that Dr. Duisberg was very articulate about this plan. He had opinions and he said what was the only right way to do it, and he said the plan would really be a deterioration because one of the South American countries might go to war.

Now, does that help you to remember, perhaps, that he participated in these meetings? A. No, it doesn't. It only helps me to remember that—yes, in Basle they were

no doubt reluctant, I think I have stated before, I believe to remember, against a maintenance of close connections as suggested by the I. G. Farben people. But that is rather vague, just an impression roughly.

Q. Uh-huh. Well, according to this, he seems to have recommended not that connections be absolutely cut, but that the right way to do it would be to pool the shareholders overseas according to his proposed draft and to cut all connections to Europe. So there would still be some grouping of the shareholders as a group. A. Yes, and the question is, Mr. Schwartz?

7768 Q. Well, you had remembered only that there was a feeling in Basle against maintaining connections with Farben. A. Yes, yes.

Q. I am pointing out to you that this purports to say that Dr. Duisberg was not so much against cutting all connections with Farben as pooling the shareholders and leaving it at that. A. Yes, but that may come to the same.

Q. Oh, I see. A. It would indicate the idea of a great or complete independence of those South American companies —but just interpretation of this memorandum, not more.

Q. You think a pool of the shareholders, such as was being discussed in this Auer matter, would constitute complete independence on the part of the shareholders? A. Well, it depends on how it is carried through afterwards. If there were again or still options towards I. G. Farben, then there wouldn't be, of course, an absolute independence.

Q. Well, perhaps the mention of the possibility of one of the South American countries entering the war would call something to your mind. When I was asking you about Exhibit 24, you said that you couldn't remember that such a question came up in this connection. Do you perhaps now remember that it was one of the considerations in the discussion of this plan?

7769 A. Well, as I told you, anything may have been discussed and raised. Obviously there was a certain fear of the Farben people; otherwise they wouldn't have

come with such suggestions. But I have in my recollection more the fear of trade restrictions and so on, but I cannot exclude now that the questions may have been discussed.

Q. Was there ever any suggestion that Dr. Duisberg himself might become part of this plan? A. I cannot recollect such a detail.

Q. Perhaps I can suggest to you something that may help you, a suggestion that Dr. Duisberg become the shareholder of great amounts of shares in these South American companies? A. Well, not to my recollection, Mr. Schwartz.

Q. Any suggestion that he succeed D. A. Schmitz as nominal owner of shares in these South American companies? A. I cannot remember such.

Q. Any suggestion pro or con that he was a suitable person to do it or not a suitable person to do it? A. No recollection. It would be just guessing.

Q. Now, it seems, according to this memorandum, that the meeting was adjourned to the afternoon, at the office of Chemie, to clear up a point about backing for you by Farben or Chemie. That is the next to the last paragraph of the morning meeting, the last two paragraphs of the morning meeting.

7770 A. Yes.

Q. And let me just give you the translation of these two paragraphs. It is the one that begins, "In spite of . . ." (indicating). A. Yes.

Q. "In spite of the guarantees to be provided under (1) above, Herr Sturzenegger is convinced that a trustee who might be found would still demand financial backing from him. He declared he would be prepared to give such backing either through his bank, or another company in close contact with him, if he, in turn, were covered by I. G. or I. G. Chemie.

"To clear up this point a meeting with Herr Sturzenegger was agreed upon for the afternoon in the office of I. G. Chemie. It turned out that Herr Dr. Duisberg apparently was informed by the I. G. Chemie about the last meeting in Basle on March 14th.

And then it says that Herr Dr. Duisberg was asked by the I. G. Chemie to assist with the discussions in the afternoon so that—and then it lists all the people who were present. A. Uh-huh.

Q. But the things that I read—were those roughly fair translations, Dr. Sturzenegger? A. I should say so.

Q. So according to this memorandum, it seems, does it not, that the point to be cleared up at the afternoon meeting

7771 in the Chemie office was the backing if you, in turn, were covered by Farben or Chemie. A. Yes, it seems like that.

Q. Now, this question of Chemie participating in a money arrangement—what do you remember about that? A. Nothing. I only remember that suggestions—and do not remember the details— suggestions made by I. G. Farben were ultimately declined and that then this trusteeship of Dr. Auer—I do not know whether the same day or later on—was suggested. But what was proposed as to the details I do not remember. Any of these questions, of course, might have been discussed, but that is not my recollection.

Q. Well, you have been telling us just now of Chemie declining to be the trustee and Auer becoming the trustee. A. Uh-huh.

Q. But the immediate question I am asking has to do with backing by Chemie of you in the money part of this transaction. A. Uh-huh.

Q. So do you remember anything about a request to Chemie that it provide you with backing so that you could help finance the Auer transaction? A. No, I do not recall any such thing.

Q. Earlier I was asking you about money but I was asking you whether you put up backing so that another bank

7772 could finance it. A. Yes.

Q. Taking it backwards, backing that you received, did you receive backing from either Farben or Chemie for

the purpose of having anything to do with these transactions? A. Not to my recollection.

Q. Again there, you couldn't swear to that? A. No, I couldn't. It lays eight or more years back and I, of course, try to give you the best of my recollection, but I cannot swear.

Q. Well, you see you had never mentioned anything about money when you gave us your statement on the Auer matter some time ago. A. Yes.

Q. So I was wondering whether these documents would help you to remember anything at all about the money aspect of the transaction. A. No, I had not in mind that money aspects were involved. From these internal memos, it appears that such question, too, seems to have been discussed.

Q. Uh-huh. A. I am not in a position to deny such a possibility. I do not recollect.

Q. I see. Several times while I have been asking you about money and backing and intermediary banks, you have asked

7773 me to distinguish this transaction or generally. Was there ever any such backing during the European war, say between '39 and '45, that you gave in connection with a Farben transaction or that you received in connection with a Farben transaction? A. Any other respect? I cannot remember any such occasion, but it is possible.

Q. Again, you couldn't swear now, but you just can't remember? A. No, that I couldn't.

Q. You see, I wondered why you distinguished between this situation and all other possible situations. Perhaps you had something on your mind. A. No, I only think this situation—I believe I feel pretty sure as to the outcome. The other question, what happened all during these eight years, all during the war period—well, that is even more difficult to answer as I can only say I have not in mind now one occasion that would be covered by your question. I couldn't

—maybe I am just not thinking of it; it doesn't come to my recollection. If you are able to refresh me—

Q. Well, you weren't very refreshed by this memorandum, were you? A. No, I was refreshed—no, not very much. Well, as to these additional points I already stated in so far, but

7774 an independent recollection on this one is very vague.

Q. Now at the afternoon meeting at Chemie, the memorandum purports to say that it might be possible to find a Swiss big bank to give such loans if it received securities through Sturzenegger, and that Sturzenegger was prepared to provide such security. And then it says:

"The details of the loan or the transfer were not discussed to avoid further complications." A. Where is that?

Q. That is the fourth paragraph from the end. A. Fourth from the end?

Q. On the very end. A. Ah, that is here.

Q. And is that roughly what it says, "The details of the loan or the transfer were not discussed to avoid further complications?" A. Yes.

Q. So it seems, according to the memorandum, that the question was certainly not finally settled at that moment. A. Yes, it seems like that.

Q. Can you remember any further discussions of details of the loan or the transfer? A. No, Mr. Schwartz. I cannot exclude them, but I don't remember them.

Q. Can you remember any further discussions more

7775 specifically, about providing backing for a big Swiss bank or any other bank which might finance the loan? A. No, I can't.

Q. You couldn't again swear that they didn't exist? A. No.

Q. But they didn't take place? A. No, because—I do not believe it.

Q. I see.

MR. WILSON: May we take a five-minute recess, Mr. Schwartz?

MR. SCHWARTZ: Certainly.

* * *

7776 Q. Perhaps after reading the whole memorandum, Mr. Sturzenegger, you can tell us more about Mr. Moll. For instance, whether it was he who was in touch with Mr. Auer or the source of any information Mr. Auer got. A. Well, not to my recollection.

Q. In the second paragraph of the memorandum it says, "We got in touch with Herr Sturzenegger alone and informed him about the new plan, referring to the first discussion we had in Basle on March 14." Do you have that? A. Yes, I have that. On page 2?

Q. Yes. Well, I don't have the pages separated in my translation. It's the second paragraph after the list of the countries. A. I see.

Q. Now, this memorandum, I point out to you, is dated March 30th, and is on discussions on March 28th. A. Yes.

Q. And we have here this reference to a "first discussion we had in Basle on March 14." Do your remember,
7777 perhaps, that there were two discussions, and that the first was with fewer people attending than the second? A. No, I do not remember that.

Q. Do you remember perhaps—A. I only remember that there were discussions, you see, as I told you, that there were several, one on this date and one on the other, that I do not recollect.

Q. The other day I think you gave us the impression that there was just one meeting; that these gentleman called on you; that you gave them Auer's name, and that that was all there was to it. But you do remember now, don't you, that there were meetings over some period? A. Well, I have no independent recollection of that, but as these memos indicate that there were several discussions I can not deny that, but I do not recollect.

Q. In the very first paragraph of the memorandum it says

in the second sentence, "To make the decision easier for Herr Sturzenegger it was proposed to limit the circle of the agencies in question,"— A. Yes.

Q. And then they mention how they would limit the circle. Do you remember anything about a plan being proposed and then a less comprehensive plan being proposed? A. No, nothing at all. No recollection of such detail.

7778 Q. Then there is the name of the law firm of Dr. Linck, L-i-n-c-k, Buenois Aires. Does that name mean anything to you at all? A. No, nothing at all, Mr. Schwartz.

Q. You can't remember ever hearing of a Dr. Linck of Buenos Aires? A. No, I can not remember that.

Q. So you can't know, for instance, whether he might have been a stockholder in any of these South American firms? A. I have no idea.

Q. You don't remember ever having granted him any loans? A. No, I don't think so.

Q. But do I take it that you couldn't swear that you hadn't granted him any loans? A. Well, you always ask me this question. I can only swear that I have tried to give the best of my recollection, but that's all. And obviously my recollection as to the details of these discussions which took place so long ago is—I regret it is—this vague.

Q. At the bottom of page 1, following 1 and 2, there is a mention that the provision as to professional secrecy will be welcomed by us, the author of the memo. And then a sentence reading, "That the trustee, first of all, would consult Herr Sturzenegger, is obvious because the business

7779 would have been obtained from Herr Sturzenegger." And then in parentheses: "The I. G. shall not appear or be mentioned in any way whatsoever."

Do you have that? A. Yes, I have that.

Q. That's roughly a correct translation, is it not? A. Yes, I should say so.

Q. Do you remember any discussion of the likelihood

that the trustee would consult you? A. Well, I do not recollect that, but I stated before that has been done afterwards in as much as Mr. Auer contacted me; for instance, this letter with these questions you showed me, this letter he has written to me, and I have transferred the questions to some gentleman in Germany.

Q. Uh-huh. Yes. But I mean any discussion of the idea that he would consult you. A discussion at the beginning of the plan or the idea that the trustee would consult you. A. No. I do not remember that, but it has been afterwards handled in such a way, so seems that the question came up and has been discussed along this line.

Q. Then the next sentence: "The I. G. shall not appear or be mentioned in any way whatsoever."

Do you remember any discussions as to whether Farben should not appear or be mentioned in any way? A. No, I do not remember that.

7780 Q. That reminds me of my questions to you about your dealings with Auer in the matter of the letters. I asked you whether it was clear that you were dealing with him as for Farben or whether you were the boss. Does that help you remember whether, when you dealt with Auer, it was understood that you were the boss or were not the boss? A. No, it doesn't remind me. I think I made a statement before that in my opinion there, I think, could have been no doubt in the eyes of Dr. Auer that I was not the boss, because he couldn't presume that I handled this business for my own there. But that's just speculation.

Q. Uh huh. A. And I draw that conclusion all the more as we have learned afterwards that Dr. Auer has been contacted directly by some I. G. Farben gentlemen, haven't we? I remember a memo or something like that where it was stated that Dr. Auer was found agreeable or acceptable or something like that. It seems to purport to that direct connection.

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7916 Q. Now, you were, of course, primarily a banker?
A. Yes.

Q. And you have to do, of course, with money and drafts.
A. Yes.

Q. Would you think perhaps of transfers of money from outside Germany to Farben? A. Well, we as a neutral bank could do business in principle with all countries, at war or not at war. Now, we are very sorry that later on because of the effects of the blacklisting we were no longer able to do business with the Empire and the United States as we would have liked. So there remained Switzerland and the other countries neutral

7917 and belligerents.

And I think the business was carried on on the same lines as other Swiss banks, as big Swiss banks carried on business. That is to say—

MR. WILSON: Now Mr. Schwartz,—

MR. SCHWARTZ: You have interrupted. He was just about to finish, Mr. Wilson.

THE WITNESS: Just to illustrate that, I think that transfers could be made. I do not remember special transactions if you do not refresh me, but, in general, I only wanted to repeat that my impression and recollection is that we did business in the same way or similar way as other Swiss banks would have done business during this period.

7918 MR. WILSON: I want to interpose an objection along the same line that I did this morning. As I see this line of inquiry, it does not come within the scope of your notice of this deposition—the reasons I have given you this morning that motivate my raising this question; absence of records in this country, the repetition of the same series of questions and answers—and because of that I shall direct the witness not to answer further on this line of inquiry.

MR. SCHWARTZ: Just so that you may see the specific questions that I would ask and you direct him not to answer, and that I do ask:

By MR. SCHWARTZ:

Q. This business that you carried on as other Swiss banks did—I take it by that you meant business with Germany?

MR. WILSON: I direct you not to answer the question.

By MR. SCHWARTZ:

Q. Will you describe the course of your business with Farben or with Germany during the war? I will say between 1939 and 1945.

MR. WILSON: I direct you not to answer the question.

By MR. SCHWARTZ:

Q. More specifically, will you describe it between Pearl Harbor, December 7, 1941, and the surrender of Germany?

MR. WILSON: Same direction.

7919 By MR. SCHWARTZ:

Q. And will you describe the course of your banking business with occupied countries? Countries occupied by Germany when they were occupied?

MR. WILSON: Same direction.

By MR. SCHWARTZ:

Q. And by that, of course, we all understand I mean France during its occupation, Norway during its, and so on. Will you tell us the approximate amounts of money that I. G. Farben deposited with you during that period?

MR. WILSON: Same direction.

By MR. SCHWARTZ:

Q. And will you tell us the amounts and the sources of money that were transferred through you to I. G. Farben?

MR. WILSON: Same attitude.

MR. SCHWARTZ: How about a ten-minute recess, Mr. Wilson?

MR. WILSON: Yes.

(Thereupon, a brief recess was taken.)

MR. SCHWARTZ: Some further questions which I think you will no doubt direct him not to answer:

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that you customarily or often between 1939 and 1945 received remittances from outside Germany for the account of Farben under
7920 code words?

MR. WILSON: I direct you not to answer that.

By MR. SCHWARTZ:

Q. And if your answer to that should be that you ever received any such remittance, will you give us all the details?

MR. WILSON: Same comment on my part.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that you received communications from people or firms in Japan under code words involving remittances between Germany and Japan?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. And if your answer should be that that was the case at any time or that it might have been the case under your impression of your banking business with Farben, will you give us all the details?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that you executed financial transactions for Farben in neutral countries without mentioning Farben's name?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. And if your answer should be that it might have
7921 been possible or that it did happen or that you could-
n't exclude the possibility, will you give us any details that you have or can reconstruct from your banking business with Farben?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that at some time or between 1939 and 1945 or that during the entire period Farben kept accounts with you in various foreign countries?

MR. WILSON: Same.

MR. SCHWARTZ: Can we agree, Mr. Wilson, that the "will you give us all the details" part is understood between us? The second question? And I won't even wait for you to say, "The same."

MR. WILSON: Yes, sure.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. And if your answer should be that Farben had ever kept accounts with you in any currencies other than Swiss, will you give us all the details?

Isn't it the fact, Mr. Sturzenegger, that for the account of Farben you bought Farben stocks or bonds or both during the period 1939 to 1945 to the value of approximately a million Reichsmarks or more?

7922 MR. WILSON: Will you read that question back, Mr. McLaughlin?

(The reporter read the question.)

MR. WILSON: Same comment on my part.

By MR. SCHWARTZ:

Q. And if your answer should be that for anyone's account during that period you have bought Farben stocks or bonds, will you give us all the details?

Isn't it the fact, Mr. Sturzenegger, that during the period 1939 to 1945 Farben kept with you on deposit for safekeeping or for other purposes its own stocks or bonds to a value of over a million Reichsmarks?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that using Farben's money and on Farben's instructions you cloaked Farben's interest in numerous transactions in neutral countries during the war period?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that using Farben's money and on Farben's instructions you cloaked Farben's ownership of property in corporations in various countries over the world other than Germany during the war period?

7923 MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that you advised I. G. Farben as to the disposition of its property in the event of an outbreak of a European war?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. And that you gave such advice during the European war?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that frequently

during the war period you made remittances to Farben through Deutsche Laenderbank?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that your firm and I. G. Chemie together own at least the majority of the stock of Deutsche Laenderbank?

MR. WILSON: No objection to that question.
MR. SCHWARTZ: And the answer is, "Yes," is it not?
THE WITNESS: The answer is, "Yes"

By MR. SCHWARTZ:

Q. Isn't it the fact that your large remittances to Farben through the Deutsche Laenderbank on Farben's
7924 instructions during the war were without mentioning Farben's name and under a code word?

MR. WILSON: Wait a minute. Let's have that read back, Mr. McLaughlin.

(The reporter read the question.)

MR. WILSON: Mr. Schwartz, you mean by "your remittances" remittances of Mr. Sturzenegger or his firm, don't you?
MR. SCHWARTZ: Yes.
MR. WILSON: I object upon the same grounds.

By MR. SCHWARTZ:

Q. Isn't it the fact, Mr. Sturzenegger, that under a code word for the benefit of I. G. Farben you accepted and received during the war period remittances from Japan?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. From China?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. From South America?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. From other countries as well?

MR. WILSON: Same.

By MR. SCHWARTZ:

Q. And, just for the record, if your answers to any
7925 of those questions had been, "Yes," or "Yes" with an explanation, or that you could not exclude the possibility, or that such things might have happened, will you give us all the details?

MR. WILSON: Same objection.

MR. SCHWARTZ: All right.

MR. WILSON: Does that conclude your list?

MR. SCHWARTZ: Yes, sir.

MR. WILSON: I'd like to say for the record at this time that the failure of the witness to respond to the questions is entirely at my direction, and my direction is based solely upon the legal proposition that the inquiries are outside the scope of the notice that was given. I do not imply that the witness would not answer the same questions at another place at another time.

That's all.

MR. SCHWARTZ: Do you mean by that Switzerland?

MR. WILSON: Yes.

MR. SCHWARTZ: In view of your position on directing the witness not to answer taken this morning and taken again today, we find ourselves unable to proceed for the rest of this afternoon, so we would like to adjourn.

MR. WILSON: That's all right with me.

* * *

7954 By Mr. Schwartz:

Q. Dr. Sturzenegger, you know that—I hope you know, or do you know?—that there is a court order that was signed in July with respect to the inspection by the defendants of documents, the documents of I. G. Chemie and the documents of H. Sturzenegger et Cie. The court prescribed that after this deposition of yours is concluded the plaintiff, I. G. Chemie, is to produce for our inspection documents on its premises and documents on the premises of H. Sturzenegger et Cie. Now, have you discussed with your colleagues in H. Sturzenegger et Cie. or with others whether you will find yourself able to permit those documents to be inspected by us as the court contemplated?

Mr. Wilson: If you please, just answer that "yes" or "no," Dr. Sturzenegger.

The Witness: Pardon me? I didn't get—

Mr. Wilson: Just answer that "yes" or "no."

The Witness: I have not come to the conclusion.

7955 By Mr. Schwartz:

Q. I gather that you went further than Mr. Wilson asked you to and you meant you have not yet come to a conclusion as to whether you will be able to permit those documents of H. Sturzenegger to be inspected? A. Well,—

Mr. Wilson: The question was—and that is where you misunderstood me—whether you have discussed the subject with your associates and with others, and that calls for an answer, "Yes, I have," or, "No, I haven't."

The Witness: Only touched it. No. I have not discussed it fully. No.

By Mr. Schwartz:

Q. You said you have not yet come to a conclusion? A. (Witness nodded affirmatively.)

Q. And by that I take it you meant that you have not yet come to a conclusion as to whether those documents will

be able to be inspected by us, the defendants? A. I think I am not in a position to grant the inspection.

Q. I see. Can you tell us why?

MR. WILSON: Now, I submit that that is not a matter for this discovery deposition. If you are accumulating information for a motion, I submit that this is not the time and place to do it, Mr. Schwartz.

7956 MR. SCHWARTZ: All right. I would like to ask the question nevertheless.

MR. WILSON: You have asked the question.

MR. SCHWARTZ: All right. And you have objected.

MR. WILSON: I object, and I direct him not to answer that question. I think this is not the place to take this up.

MR. SCHWARTZ: All right. Do I take your direction not to answer to cover any questions I would ask about the subject?

MR. WILSON: Yes. I think your survey as to what this witness' attitude is toward an order of the court which has been made and which has designated certain documents and therefore has nothing to do with discovery is not a matter to be taken up upon a deposition of the witness.

MR. SCHWARTZ: All right. But to be certain that other questions I might ask—

MR. WILSON: I agree to that as if you had asked other questions relating to the same phase of the matter.

MR. SCHWARTZ: Let me state them for the record. Only if you do not direct Mr. Sturzenegger not to answer them need we bother about them at this time.

By MR. SCHWARTZ:

Q. Have you discussed it with your partners, I. G. Chemie and Industrie Bank?

What have you said?

7957 What have they said?

How often have these discussions taken place?

Why have you been unable to reach a conclusion?

Is there any event or fact which must first be determined before you can come to a conclusion?

Are you definite today that you could not permit the inspection if it were on a time schedule to take place tomorrow?

What, other than a further order of the court, can you conceive would change your conclusion that you cannot permit the inspection?

* * *

7970 Q. Now, Mr. Sturzenegger, you also recall that there were a group of questions, some 22 questions, on the last day of our February examination which on direction of counsel you did not answer. Do you remember that? A. I remember that.

Q. Are you prepared today to answer those questions?

MR. WILSON: Mr. Schwartz,—

MR. SCHWARTZ: I'm sorry. Let me ask this:

By MR. SCHWARTZ:

Q. You also know, Mr. Sturzenegger, the court has ordered that you answer those questions? A. I know that.

Q. All right. Then are you prepared to comply with the

7971 order of the court?

MR. WILSON: From the point of view of the reason which was overruled by the judge, naturally we are prepared to comply with the order of the court. You have come fairly rapidly to an issue that perhaps I should state to you at this time so that we can point it up. I will state it perhaps because of my ability to express it in English a little better than Dr. Wehrli can.

I have been advised by my Swiss associate with respect to the secrecy laws and the laws of privilege in Switzerland, and we have come to the conclusion that a great many of these questions would seek to elicit answers which would

require Dr. Sturzenegger to violate one or another of their secrecy or privilege laws.

The order which Judge Bailey signed directing an answer to a series of questions was over my objection that those questions were not within the scope of the notice that was given. The court was not asked at that time to pass upon the question of privilege or secrecy. It had not been raised by me in this respect. It had been mentioned from time to time generally by me in the course of this deposition.

Since the recess of Dr. Sturzenegger's deposition, Swiss counsel have considered this question and have advised me—

7972 and the witness, I understand—of certain legal situations. We should outline those legal situations to you because it is our intention to present the matter to the court upon our own initiative under Rule 30(d) of the Federal Rules of Civil Procedure.

We are cognizant of the fact that Rule 26(b), under which you are taking this deposition, expressly provides that the witness may elect himself not to answer those matters which are privileged, but since I know that you and I are in disagreement about what is the law applicable to this situation, and in view of a keen desire to obey Judge Bailey's order in its proper setting, we are prepared to proceed very shortly with the filing of a motion under Rule 30(d) with respect to the question of privilege and the question of secrecy.

The question of privilege or the question of secrecy divides itself into several phases. With respect to the secrecy between banker and client, somewhat akin to the lawyer and client, doctor and patient, clergyman and parishioner privilege, I am advised that in Switzerland such a privilege is regarded very seriously, and that while there is recognized to be some power in the Swiss-domiciled courts to

require the waiver of that privilege, the Swiss law is to the effect that a foreign tribunal is not regarded as having such power.

Moreover, with respect to the question of the banker
7973 client privilege, a waiver of the privilege by the party in whose favor the privilege runs, namely, the client, is a means of accomplishing the clearance of that witness or that banker for testifying on the subject—just as the waiver of a client in respect of his privilege may permit a lawyer to testify.

In addition to the situation which I have just described, there is also a penal statute known as Article 273 of the Swiss code which makes it a crime for a Swiss national to disclose business information to one outside of the territorial limits of the Confederation of Switzerland. This is known as economic espionage, economic intelligence, and is a penal statute applicable according to Swiss law extraterritorially in respect of any Swiss national who violates the law, despite the fact that he is physically outside the territorial limits of Switzerland when he commits such a violation.

I am informed by my Swiss associate that this statute is regarded very seriously in Switzerland and that an answer to some or all of the questions—some of the questions anyway—in Judge Bailey's order would very definitely constitute the commission of a crime by Mr. Sturzenegger in violation of Article 273.

In this situation, since the offense runs against the society
7974 of Switzerland as distinguished from the protection to the client in the banker-client privilege relationship, it is doubtful if there is any entity capable of extending a waiver to Mr. Sturzenegger in this situation.

With regard to the questions relating to the Farben enterprises, because of your attitude or the attitude of the Office of Alien Property as to the relationship between the plaintiff and Farben, I understand that if the legal conservators of the Farben properties, whatever the organization might be, would extend its consent to the witness to disclose business information relating to those enterprises that that could be a reason upon which the witness might be able to act in answering the questions, despite the risk which he yet would take of violating the criminal statute of Switzerland.

Now, I have stated the situation fairly generally. The witness is faced with the specter of violating the criminal law of his country by making a number of answers here. I know your position, Mr. Schwartz, from memoranda and from discussions, that the law of a forum, according to you, determines these factors. We have a keen desire that we should not be misunderstood with respect to Judge Bailey's order. I have before me a copy of Judge Bailey's order, from which there was a deletion by mutual agreement, so that it is clear from Judge Bailey's order that the only contention which was made to him at the time was with respect

7975 to the scope of the notice which was served upon us.

I repeat in conclusion that despite the fact that privilege may be asserted without more ado, both because of the order in question and because you and I understand that we disagree on this proposition we will promptly submit this question to the court.

I would be personally grateful to you if you could go on to other matters for this opening day instead of pursuing

things which will obviously conflict with our view of this privilege-secrecy problem.

MR. SCHWARTZ: That was a general statement of your views and the desire that we go on to other matters, but have you anything to say, Mr. Wilson, as to whether the witness will answer these questions?

MR. WILSON: I thought I was saying that.

MR. SCHWARTZ: Well, of course, you were discussing the whole matter, but I found it very general. Will you be directing him not to answer questions if I proceed?

MR. WILSON: We will ask the court to relieve the witness of answering any of these questions or other questions related thereto or of a similar character which you will propound until the question of privilege and secrecy can be passed upon by the court.

Now, I am so keen about that situation that unless you will be kind enough to go to another subject and thus
7976 thereby permit the deposition to continue on from day to day I must say to you, Mr. Schwartz, that if you insist upon a position to be taken other than that which I have already taken with respect to these and similar questions we shall ask your kind cooperation to suspend this deposition while we immediately present the matter to the court.

MR. SCHWARTZ: I may only be asking for so much specificity as to be silly, but do I take it then if I ask these questions you will direct the witness not to answer?

MR. WILSON: No. If you ask the questions I will ask a suspension of the deposition.

MR. SCHWARTZ: But you will direct him not to answer until we suspend?

MR. WILSON: No, I will not violate—

MR. SCHWARTZ: You will ask me for a suspension, or you will leave the room?

MR. WILSON: I hope I may have your cooperation as you had mine when you wanted to suspend the deposition.

MR. SCHWARTZ: Let's cut through the generalities. I hereby ask all the questions.

MR. WILSON: All right.

MR. SCHWARTZ: Do you—

MR. WILSON: I ask for a suspension of the deposition until I present this problem.

MR. SCHWARTZ: I cannot agree.

7977 MR. WILSON: Very well, sir.

MR. SCHWARTZ: Do you direct the witness not to answer?

MR. WILSON: We will withdraw from the deposition and present the matter to the court.

MR. SCHWARTZ: I see. All right, sir.

I don't mean to close yet. I would like to make a general statement myself. I take that to be a direction to the witness not to answer any of these questions at this moment, and if there be any doubt of that, Mr. Wilson, I will ask every one of them.

MR. WILSON: You won't ask them, sir, because I intend to withdraw from the room.

MR. SCHWARTZ: All right, sir.

MR. WILSON: We certainly have—

MR. SCHWARTZ: Please don't interrupt me, Mr. Wilson. I didn't interrupt you.

MR. WILSON: Lawyers have got to conduct themselves—

MR. SCHWARTZ: Yes, Mr. Wilson.

MR. WILSON: —with mutual convenience in this situation or the matter should be handled by a Special Master who

will rule on these things. We are not going to violate Judge Bailey's order even by inference, Mr. Schwartz, and, therefore, since you have come to the point where you seek to elicit answers which will cause this witness, in the
7978 opinion of the Swiss counsel, to violate the secrecy and privilege statutes of Switzerland, we have no choice but to go ahead and present the matter to the court.

And I will say to you, sir, that if I am obliged to withdraw from the room under these circumstances that I will present such a matter to the court orally at 12:30 today, Judge Keech, and I will follow it up with a written matter by tomorrow morning.

* * *

7992 MR. SCHWARTZ: Are we resumed, Mr. Wilson?

MR. WILSON: Yes, Mr. Schwartz.

MR. SCHWARTZ: I should like the record to show that we did not sit here yesterday afternoon because we were in court, and that we were in court this morning at which time the judge signed an order overruling the objection you raised yesterday, Mr. Wilson, and thus reinstating and reaffirming the order directing the witness to answer the questions stated in Judge Bailey's order of November 7th.

Thereupon,—

Hans Sturzenegger

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Resumed).

By MR. SCHWARTZ:

Q. Mr. Sturzenegger, I take it that you have no reservations now as to your willingness to answer these questions?

A. I am prepared to answer to the best of my ability.

Q. Mr. Sturzenegger, you were banker in Switzerland for I. G. Farben during the war, were you not? A. I was a banker and did business also with I. G. Farben.

7993 Q. And you did banking business for I. G. Farben? A. Yes.

Q. Will you tell us generally the nature of the banking business you did for I. G. Farben? A. Well, that was in the line of general banking business. That is to say, the same that other neutral or Swiss banks would have done also. All kinds of banking business, so to speak.

Q. Well, what kinds? A. For instance, keeping an account for I. G. Farben as client, executing orders to transfer amounts, receiving remittances. All that is ordinarily combined with having an account for a client.

Q. Then for I. G. Farben you did banking business consisting of keeping an account, executing orders and receiving remittances? A. Yes, and whatever else may have come up in such banking connection.

Q. Well, what else did come up? A. Well, I do not remember special cases, but keeping, for instance, maybe securities, because I mentioned before only accounts, or to convert one currency into the other, just to give you an example of such banking business.

Q. Can you give us other examples?

7994 A. Other example could be to buy stock.

Q. At their request? A. Pardon?

Q. At the request of your client Farben? A. Yes. I am not sure whether this happened, but that is also one thing that is normally done in banking business. A client has an account and requests the banker to sell or to buy stock or bonds.

Q. For the account of the client? A. Yes.

Q. You mentioned executing orders. What kind of orders did you execute? A. Well, I am thinking of orders to transfer money from the account mentioned I. G. Farben had with my firm to a third party.

Q. I see. A. Which is normal transfer between banks or as the order may have been.

MR. WILSON: Mr. Schwartz, at the beginning your inquiry was about banking business for Farben during the war. Can we define what you mean by "during the war"?

MR. SCHWARTZ: Yes, gladly. I mean the European war between 1939 and 1945. And if you should ever find, Mr. Sturzenegger, that there is a difference between 1939 and Pearl Harbor, will you please tell me?

7995 THE WITNESS: Well,—

MR. WILSON: I understand what you mean. I'm not sure he does.

THE WITNESS: May I ask now is that a question, or do you generally ask me to proceed this way?

By MR. SCHWARTZ:

Q. You will understand when we speak of the "war period" that we mean the war period between 1939 and the end of the European hostilities. A. Yes.

Q. The war was still on, but I am interested in the period up to the surrender of Germany. A. Yes.

Q. If you like, Mr. Sturzenegger, I will be glad to think of the war with you as between the United States' entry into the war and the end of European hostilities. A. Yes.

Q. Which will you find most convenient in answering questions about the war period? A. Well, I should say the latter, because it occurs to me that since the United States were

only at war since Pearl Harbor, in this connection of operations more rightly the period—

MR. WILSON: Mr. Schwartz might want to know a longer period, and he is entitled to know it.

7996 THE WITNESS: I see.

MR. WILSON: If you could be conscious in your own mind of two different dates as you answer questions, it might help the answers.

THE WITNESS: Yes.

By MR. SCHWARTZ:

Q. Just to be comprehensive, Mr. Sturzenegger, I will think of the war as between September 1939 and the end of European hostilities. A. Yes.

Q. So if I ask you about the war period, I mean 1939 to 1945. A. Yes.

Q. If you wish to make a distinction between the first two years and the next four years, you may. A. Yes.

Q. But I won't hold you to it. Only if you wish to. A. Yes.

Q. I am glad you are making a note of that. I hope it's that war period. A. Yes. Pearl Harbor is December 7th?

Q. December 1941. A. Yes.

Q. You mentioned transfer of moneys. You see, I am not a banker, Mr. Sturzenegger,—

7997 A. Yes.

Q. —so if I seem rather obvious, you will excuse me. You meant when a banking client asks you to pay money to someone else? A. Yes.

Q. You pay it and charge his account? A. Yes.

Q. And notify him that his accounts have been charged? A. Yes; exactly.

Q. Now, that was what you responded when I asked about executing orders. A. Yes.

Q. What other kinds of orders? A. Well, these are the only kind of orders I am thinking of, but, as I mentioned before, there could have been selling or buying orders or say orders to transfer security depot, if any, to a third party.

Q. You said a security depot. You mean a word spelled "d-e-p-o-t?" A. That's right.

Q. What does that mean? A. That means—I'm not sure if I expressed it the right way—security held for the account of the client in—what you say?—safe deposit box. Probably not a box. Safe deposit or safe deposit account. I am not sure.

7998 Q. Such as a broker might keep? Keeps securities for his client? A. Yes.

Q. And sells them, buys them, keeps them safely but not necessarily in a separate box? A. No, no. You see, these functions, which are in the United States two separate functions, the broker and the banker, these are in Switzerland combined. The bank does both.

Q. So you might more properly describe yourself as a banker-broker in our language? A. No, if a bank does banking of all kinds of the banking business branches, it is a bank. Can't specialize. It is also possible then it is a broker. Certainly call my firm a bank.

Q. Of course. That is its proper designation in Switzerland. But from our point of view you did banking and brokerage functions? A. Yes.

Q. And you did both those functions for I. G. Farben? A. Among others.

Q. I beg your pardon? A. I am not sure I told all—whether in the period in which you are interested we bought bonds or shares—but I am sure that we executed transfers of moneys. Of that I am

7999 absolutely sure because that often happened.

Q. I see. So you couldn't be sure—you aren't sure—that during that period, 1939 to 1945, you acted as a broker buying and selling bonds? A. I'm not sure.

Q. You could have done it? A. Could have, yes.

Q. But you're not sure? A. Yes.

Q. And certainly if your client had requested it you would have done it? A. Yes.

Q. Just to exhaust the possible other functions you performed, what other functions than these did you perform—and I will recapitulate them for your benefit: You had accounts, you executed orders, and you gave us the illustration of transfer of moneys. And you received remittances. You kept securities for the accounts. You converted one currency into another. You may have bought stocks or bonds as a broker. And you transferred security depots: A. May have, yes.

Q. Are there any other functions that you performed for Farben in this period? A. I do not remember any.

Q. What other functions does any Swiss bank perform?

8000 Perhaps that will help you to think of others you did.

A. Well, I don't know what you have in mind, Mr. Schwartz, but what I mentioned seems to cover all that is generally done. But if you can mention me special occasions—

Q. I thought you could not have overlooked the obvious function of a banker of lending a client money, granting credits. A. That's right. I have forgotten that. That's right.

Q. So that was another of the functions you performed for Farben? A. Yes.

Q. You granted them credits from time to time? A. Quite right; yes.

Q. Was granting credits a large part of the business you did with Farben in this period? A. Well, it's difficult to give

an appropriate answer. The credit business was during the war period rather reduced according to my recollection.

Q. Reduced over what it had been before this period? A. Yes.

Q. Was it still a large part of the business you did with Farben? A. Let me think of the special cases that come up in

8001 my mind on this question.

Well, I should say not very large. But it's difficult. I cannot give a percentage.

Q. You were thinking just now for a few moments of special cases. Perhaps you could tell us of those special cases. A. Well, I thought of the cases or one or two of the cases that are mentioned, if I am not wrong, in the SCO report under credit, under participation, under another Swiss bank.

Q. What credit was that? A. Well, participation in a greater credit given by another Swiss bank.

Q. What credit? A. That is mentioned in the SCO report.

Q. Well, you don't remember what it is? A. Well, about 500,000 or 600,000 francs.

MR. WILSON: Your participation or the full credit?

THE WITNESS: Our participation.

By MR. SCHWARTZ:

Q. What were the factors or the circumstances of it? Whom was it granted to? Can you identify it in any way other than by amount? A. Well, it was just a normal credit.

Q. To whom?

8002 A. To I. G. Farben.

Q. I see. Were other people participating in the credit? A. With us possibly participating among others, yes.

Q. Just to identify it, what was the purpose or the fact of this credit? What type of thing was it? A. Well, how should I call it? It was just a credit as a bank may give it to an industrial or other client.

Q. You don't remember anything about the purpose or the nature? A. No, the purpose not, because generally it is not known or must not be known to the party who grants the credit.

Q. Do you lend money without knowing the purpose the money is to be used for? A. It depends on the cases. Depends on the security we may have.

Q. That particular credit you can't recall the purpose of. Do you recall whether you had sufficient security so that you didn't care about knowing the purpose? A. Well, I recall vaguely that security of some kind was given. I do not recall the purpose for which the money was tendered.

Q. What other special cases of credits had come to your mind when you were thinking of them? A. Well, may I mention this so-called liquidating

8003 credit. I think it is—it's not a technical term, but the credit given to I. G. Farben was intended in that case I am thinking of to allow us a better liquidation of old engagements, a thing that was commonly done then in Switzerland and other neutral countries in view of the German currency restrictions. I think the case is explained also in the report I mentioned.

Q. Could you explain it for us? It's a very technical matter. A. It is a very technical matter.

Q. And you know it. A. Well, I haven't—it's many years ago, and I do not recall the details, but it generally I think was as follows:

My firm had old credit lines, old advances, to other firms that were frozen in view of the German currency restrictions, and, of course, we thought how can we avoid a great loss, how can we possibly liquidate these old lines in the best possible way? And I think it was done then in the following manner:

These different credit lines were transferred to I. G. Farben. That is to say, I. G. Farben took over the liability instead of the former debtors. And we had to grant I. G. Farben a minor new credit line in Swiss currency on the

condition that then the whole credit was handled in such a way

8004 to permit us repayment in yearly—how you call it?—installments or yearly portions. And if I am not mistaken in my memory, this credit was liquidated in such a manner. That means the loss we would have sustained on the old lines was reduced. But please do not fix me upon the details. They are, I think, explained better and more correctly in the report.

* * *

8013 Q. You didn't have many customers during the war, did you, Mr. Sturzenegger? A. Oh, we had. Depends on what you call "many."

Q. Well, how many did you have who were good enough customers so that you would consider granting them credits? A. Well, I do not know the number by heart.

Q. I think you told us some ideas as to the number last February. I think you mentioned that you had about 20 now and that you had had about 50 throughout your banking

8014 career. Am I right in that? A. Twenty? No.

Q. I may be wrong, but I think you said you had about 20 customers now. A. No, no. Of course we have much more. But that was pure guessing. There are, of course, not as many as with the big banking institutions, but—(pausing)

Q. About how many customers did you have between 1939 and 1945? A. Wall, it's guessing, but I should say perhaps 50 to 100.

Q. And of those 50 to 100 how many of them borrowed money from you during the war? A. Well, I couldn't say that.

Q. About? A. Pardon me?

Q. About how many? A. Well, if I give you a number it's just guessing, and therefore—(pausing)

Q. Will you make a guess? Will you say half or a quarter or three-quarters? A. No, I cannot say that.

Q. I beg your pardon? A. I cannot say that by heart with all this speculation.

8015 Q. I am sure though that some of your customers are of the kind who do not borrow money from you and have never borrowed money from you? A. Sure.

Q. And some of the kind who frequently borrow money or who borrow money? A. Yes, or from time to time.

Q. Or from time to time? A. (Witness nodded affirmatively.)

Q. Now, can you divide the two groups, those who are just not the borrowing kind and those who are the borrowing kind? A. No, I couldn't.

Q. Well, can you think of any case in which you granted a credit during this period to anyone other than I. G. Farben? A. I cannot remember all the cases where we granted such credits.

Q. But can you think of any case? A. Let me see. Of course there were credits. It's difficult to say if they were during the war and to whom and so o'.

Q. Can you think of any credits? A. Credits given to individuals; for instance.

Q. Can you think of the case? Any case?

8016 You're silent, Mr. Sturzenegger. Can you answer?

A. Of course I can answer. For instance, if I am the debtor of my firm, then it is, for instance, a credit to myself. I am not sure whether it was given before or during the war. And so there are, of course, other cases.

Q. But you're not sure. Can you think of any instance in which you granted a credit to anyone, corporation or individual, other than I. G. Farben between 1939 and 1945? A. I am sure we did.

Q. But you can't think of a name?

I see that you are silent again.

A. I'm thinking it over. Well, maybe to I. G. Chemie, for instance. I am not sure, but we have this business connection. Maybe that they have had an overdraft. I'm not sure.

Q. But you can't even be sure that you did grant a credit to I. G. Chemie during this period? A. No, I'm not sure.

Q. So am I right, Mr. Sturzenegger, you can't think of one credit that you granted during the war to anyone other than I. G. Farben? A. No, that's not right.

Q. You haven't been able to tell us the name of one person to whom you granted a credit other than Farben during this period. Is that right?

8017 A. Well, I remember, for instance, a credit to Mr. Wolfensperger.

Q. Mr. whom? A. Mr. Wolfensperger.

Q. Can you remember any others? A. Yes, of course. Others I cannot remember singular cases for the moment.

Q. So you can remember only one person to whom you granted a credit other than Farben during the war and that is Mr. Wolfensperger? A. I am sure there were others. They do not come to my mind now.

Q. All right, sir. Can you remember the amount of the credit you granted to Mr. Wolfensperger? A. No.

Q. Can you remember the nature of the credit? A. Well, I think a credit against securities.

Q. What kind of securities? A. I do not know what. I think shares. Stock or shares maybe. Just ordinary security for a credit. May be that it was also personal partly. I don't know.

Q. Well, do you mean that it was a credit secured by shares? A. Yes, I think so.

Q. You don't remember what shares were the security?

8018 A. No.

Q. And you don't remember the amount of the credit? A. No.

Q. Perhaps it will help you, Mr. Sturzenegger, to remember persons to whom you granted credits if we ask you about the security for credits you granted. You mentioned that when a banker has security he may not be so much interested in the purpose to which the borrower is going to put the

money. Will you think for a moment as to the types of security you have received, the kinds, in this period? A. Well, normally Swiss shares or Swiss obligations I should say. Among others, of course.

Q. Well, does that help you perhaps remember other persons to whom you granted credits? A. No.

Q. Are there some particular Swiss shares or obligations that are the best kind of security? A. It all depends. I do not get your question. Are there better or worse?

Q. Are there some Swiss shares or obligations that are deemed by you to be the best kind of security for a loan or a very good kind of security? A. Well, that depends on the quality of the security. Possibly a corporation the shares of which are listed on the stock market, with high prices, high quotations, are of course

8019 considered better securities than a badly-off corporation.

Q. Well, then, perhaps do you remember that you granted credits to persons which were secured by shares of a prospering Swiss corporation? A. No, I do not remember.

Q. All right. I am just trying, you see, to probe your memory. A. Yes, yes.

Q. Have you ever accepted the shares of a corporation other than a Swiss corporation? I mean as security for a loan. A. I think so; yes.

Q. During the war, you remember, I am always thinking of. A. During the war I'm not sure because many foreign corporations' stocks or bonds were depreciated and didn't offer the same protection.

Q. Well, then, specifically can you remember during the war granting a credit secured by foreign securities other than Swiss securities? A. I do not remember a singular case. I do not exclude the possibility.

Q. Do you remember perhaps granting any credits during the war secured by shares of I. G. Chemie? A. That could be, but I. G. Chemie is a Swiss corpora-

8020 tion.

Q. Yes. I meant to name a specific Swiss corporation. A. Yes.

Q. Of course, you are very close to I. G. Chemie. I thought that might help your memory. A. Yes.

Q. You say it could be. Well, perhaps could you think a little harder, please, and try to remember an instance of such a loan? A. I do not for the moment.

Q. Now, if at any time during this discussion you remember any additional names of persons to whom you granted credits, will you please tell me?

Ca nyou give me an estimate, Mr. Sturzenegger, of the total amount of credits you had outstanding during the war period? A. No, I cannot, Mr. Schwartz. That would be guessing.

Q. Well, surely you are not the largest bank in Switzerland by a far shot. A. By far, no.

Q. I think you have described yourself as a small private bank. A. Small private bank.

Q. And you can give us no estimate of the total amount of credits you had outstanding during the war?

8021 A. No, I can't.

Q. Not even a remote guess? A hundred million? A. No. Far not.

Q. Not a hundred million Swiss francs? Not fifty million Swiss francs? A. No.

Q. Twenty-five million Swiss francs? A. Well, it's pure guessing. It's impossible to fix my memory on a special number.

Q. You mean you can't even guess as between five million Swiss francs and fifty million Swiss francs? A. Nearer to five than to fifty I should say.

Q. As between twenty and forty million Swiss francs? A. No, that I couldn't—

Q. Would you say it was somewhere between twenty and forty? A. May be twenty, but that's just guessing.

8022 Q. Well, as to amounts of credits you had outstanding then, you have given us only two figures, the 500,000 figure and the 900,000 figure. A. Yes.

Q. You can't think of any other debtors of yours during the war? A. There were other German firms. I am thinking just now—

Q. What were their names? A. Well, the old credit line, so called, frozen credit, to a firm in Luebeck.

Q. Where, sir? A. In Luebeck, Germany.

Q. Its name, please? A. Hochofenwerk, Luebeck.

Q. Are there such creditors—A. Well,—

Q. —debtors—I'm sorry—debtors to you? A. Debtors. Maybe there were German banks, too, I am not quite sure, but I am thinking of Berliner Handels-Gesellschaft. It may be that they were during the war period. They were once, and therefore I am thinking of them, you see.

Q. Any others?

8023 A. I am not sure whether Laenderbank was a debtor, may be. We had an account with them. Metallgesellschaft, I think, was. There were different German firms, mostly old lines.

MR. WILSON: What was the last gesellschaft mentioned?

MR. SCHWARTZ: Metallgesellschaft.

THE WITNESS: Yes, but I wish to emphasize that these were all old credit lines, but that were, according to my memory, still, or partly still in existence during the war, but not granted during the war.

By MR. SCHWARTZ:

Q. I understand. Any others? A. I am not sure. Maybe we had lines in Holland, smaller lines.

Q. What companies? A. Well, Hollandsche Koopmannsbank, for instance.

Q. What bank? A. Hollandsche Koopmannsbank.

Q. Hollandsche Koopmannsbank? A. I am not sure. I am sure, of course, we had a banking business with them,

and, as far as I remember, there may have been a credit line.

Q. Any others? A. Well, there do not come up for the moment any others, but I will think it over and try to remember others.

Q. Let me mention other countries. Did you have
8024 customers—Do any of these remind you that you had debtors in that country? England? France? A. In England we had business connections, of course, as in all countries, but I do not remember a debtor.

Q. The Low Countries? Belgium—Not Holland, but Belgium? Denmark? A. No, I don't think so.

Q. You do not remember debtors? A. I don't remember them.

Q. Other companies in Holland? A. Who were debtors?

Q. Yes. A. I am not sure whether Mapro was a debtor. I mentioned Koopmannsbank. Maybe that was one, too.

Q. The Scandinavian countries? A. Well, as you mentioned Holland, there was too—No, it was not a debtor. I thought of another big bank in Holland in the credit business, but I think it was liquidated. I am not sure, but I think it was before the war.

Q. What was its name? A. It was Amsterdamsche Bank.

Q. The countries of Eastern Europe? A. Eastern Europe?

Q. Poland, for instance? A. We had—I think in Czechoslovakia we had—That
8025 was one of the credits, if I am not mistaken, that was included in this liquidating credit.

Q. The liquidating credit of 800,000 or 900,000 francs? A. Yes.

Q. You mean one of your former debtors—A. Yes.

Q. —was in Czechoslovakia? A. If I am not wrong. It is the firm Englert & Becker. You have it in your files.

Q. What is that? A. Englert & Becker.

Q. I understood the liquidating credit was formed of German funds, but I assume you mean that Czechoslovakia was by then in Germany, and is that why you mentioned

former German debtors? A. No, first I didn't think of this portion because I think it was a smaller one.

Q. I see. They were a Czechoslovakian firm? A. I think so.

Q. Poland? Any debtors there? A. Poland?

Q. Poland. A. Not to my recollection.

Q. The Baltic countries? A. Not to my recollection.

8026 Q. Russia. A. Neither.

Q. I am doing this just to be comprehensive. A. Yes, covering the whole earth, I suppose.

Q. Southern and central Europe? Bulgaria? Rumania? Greece? Yugoslavia? A. Rumania—I am not sure. It may be. It may be. We had once there a connection in Rumania, Romanil, that was, if I am not wrong, in Rumania.

Q. Bulgaria? Yugoslavia? Greece? A. Well, in Greece, it may, too, be the case. I remember this small Athanil business.

Q. You owned stock in that company? A. Yes.

Q. Then we have already discussed it. A. Yes, I think we have covered that in the last deposition.

Q. And they might have been a debtor? A. Yes, may. I am not sure.

Q. Well, didn't you lend them money, or individuals in Athanil, money to buy stock? A. I think to individuals, one or two or more individuals.

Q. And that was by arrangement with I. G. Farben? A. Yes.

8027 Q. Italy? Any debtors in Italy? A. I cannot remember one just now.

Q. Austria? A. Well, there were formerly, but I am not sure whether that was the case during the war.

Q. What were the names of those former debtors? A. Well, I am thinking of one of the names, if I am not wrong, Anilin Chemie.

Q. Any others? A. That is the only one I am thinking of now.

Q. Giving us this geographical survey of your debtors,

you haven't thought of one additional instance of a new credit you granted during the war? A. No.

Q. We left out Switzerland, Mr. Sturzenegger. A. We did?

Q. We didn't cover Switzerland in this geography. A. Yes.

Q. Who would have been your debtors in Switzerland? A. Well, I told you already that I couldn't remember for the instant special cases.

Q. What? A. That I couldn't for the instant remember special cases.

Q. Yes, but who were your debtors in Switzerland?

8028 A. Well, clients that may have borrowed money from time to time.

Q. Well, who were your clients who borrowed money in Switzerland? A. I have mentioned one case.

Q. Which one do you mean? Mr. Wolfensperger? A. Yes.

Q. Well, that was a credit that you granted during the war. A. I don't think so. I think that that was granted before and still remained during the war.

Q. I see. A. All the others—That is the same as I told you already, that is, specially named credit lines were old lines. We didn't do much credit business during the war.

Q. I thought you said that Mr. Wolfensperger was the one person or corporation other than I. G. Farben to whom you granted credit during the war. A. No, I just said that is one that occurred to me, comes up in my mind.

Q. So you are clear you did not grant Mr. Wolfensperger a new credit during '39 to '45? A. I am not sure whether it was before or during the war.

Q. Well, about ten or fifteen minutes ago you said it

8029 was during the war. A. During the war was the credit in force.

Q. I think that you said that you granted him a new credit during the war. Three minutes ago you said it was an old credit existing at the time the war began. Now, you are not sure. A. Now I am not sure. Then my expression was wrong, and excuse my perhaps not always perfect English.

Q. Then you can't remember whether the credit that you gave Mr .Wolfensperger was given before the war or during the war? A. Let me think a bit.

Q. Certainly. A. Well, to the best of my recollection, Mr. Schwartz, a credit was granted him before, already. I am not sure whether during the war this credit was increased or not.

Q. I see. So you can't give us one definite name of a person or corporation other than Farben to whom you granted a credit during the war? A. For the moment I am not in a position. I do not remember cases.

* * * *

8034 Q. You mentioned that one of your functions was to buy stocks or bonds or, I suppose, to sell stocks or bonds. Can you tell us something about that branch of your business with I. G. Farben during the war? A. According to my recollection, it was very reduced, if there was any.

Q. It had been larger before the war? A. Yes, certainly, certainly.

Q. Well, think only of the war period, and perhaps you can tell us of some instances of buying or selling stocks or bonds for I. G. Farben. A. You mean stocks of I. G. Farben?

Q. No, for. A. You mean stocks for?

Q. For, as a customer. You described it as possibly akin to a brokerage function. A. Yes. I do not remember one specific case, and I really think there were very few, if any.

Q. Neither a purchase order or a sale order? A. Neither of them.

Q. You understand when I talk of I. G. Farben I mean all the component parts of I. G. Farben, Leverkusen and the others? A. Yes. Well, there are, of course, firms which are

8035 in some way independent firms, even if belonging to I. G. Farben.

Q. Yes, but throughout, when you and I have said

"I. G. Farben" we meant to include the firms belonging to I. G. Farben, did we not? A. Well, that goes a little far, because—Well, if you tell it so now, I will concentrate this way. I think that many firms were belonging partly to I. G. Farben without being known under I. G. Farben.

Q. But I have meant by "I. G. Farben" to include all firms belonging to I. G. Farben. A. I see. Yes.

Q. You have meant the same thing? A. Yes.

Q. Of course, to your knowledge as to whether they belonged to I. G. Farben. A. Sure, I must make this reservation.

Q. So, as to the purchase or sale orders, you don't remember any instances of purchase or sale of securities for your customer I. G. Farben? A. No. I assume that there have perhaps been such orders, but I don't think they were of importance. Anyhow, I do not remember singular cases.

Q. Mr. Sturzenegger, question 13 in the order of November 7 relates to Farben stocks or bonds to the value of
8036 a million Reichsmarks. A. Yes.

Q. Let me read it to you:

"Isn't it the fact, Mr. Sturzenegger, that for the account of Farben you bought Farben stocks or bonds or both during the period 1939 to 1945 to the value of approximately a million Reichsmarks or more?" Is that so? A. If we did it, why, I couldn't make that out. It is possible. Because a million Reichsmarks, you see, is not very important.

Q. Will you read the question? A. Yes. It is No.—

Q. —13. A. —13.

"Isn't it the fact, Mr. Sturzenegger, that for the account of Farben you bought Farben stocks or bonds or both during the period 1939 to 1945 to the value of approximately a million Reichsmarks or more?"

I cannot say yes or no. I really couldn't make it out. It may be that we have had such orders, but I do not remember one.

Q. Such a transaction you think is too small to stick in your memory? A. You will please remember that one million marks

8037 depends on the time. They were considered as—
Well, perhaps 100, 150 thousands francs. It depends on the rate of depreciation of the German currency. Anyhow, it was not very important.

Q. But do you remember anything about a transaction in Farben bonds or stocks in the amount of a million Reichsmarks? Anything at all, Mr. Sturzenegger? A. Yes.

Q. Oh, you do. Will you tell us about such a transaction? A. I remember that a parcel of I. G. Farben bonds, I think, not shares, were held temporarily by my firm for account of I. G. Farben as a client. I remember that.

Q. Do you remember how they came to you? A. I didn't remember, and it was one of the questions here, so it interested me, and I talked it over and found out that, if I am not wrong now—I have been informed they came from Holland.

Q. How do you mean, "came from Holland"? A. That they were transferred to us for account of a Holland firm, I think Koopmannsbank.

Q. I don't understand that. For the account of the Holland firm? A. Yes, yes, absolutely, something like that in mind.

Q. Do you mean that you kept them for a Holland firm

8038 or that you kept them for Farben? A. No, I think we kept them for Farben. Always, again,—

Q. And I don't understand how the Holland firm comes into the transaction. A. Well, when—I believe to remember that they were delivered to us in the name or on the behalf of a Holland firm for account of I. G. Farben or something like that.

Q. I see. To be held in safekeeping for your customer I. G. Farben? A. Yes.

Q. Is that a simple banking transaction, to receive securities from Mr. A to hold them for the account of B? A. Yes, surely.

Q. And that is what you mean took place here? A. I think so.

Q. Do you remember the name of that Holland firm? A. I believe it was Koopmannsbank, the bank I mentioned before.

Q. Do you remember the year in which that took place? A. No.

Q. Beginning of the war or end of the war? A. I think beginning, but I am not sure.

Q. Do you still have those shares? A. No.

8039 Q. Do you remember when you disposed of them? A. During the war.

Q. How? A. Well, I believe, from my recollection, that they were delivered to another Swiss bank.

Q. What bank, and when? A. I am not sure, but I think it was another Swiss bank.

Q. You don't remember the bank to which you delivered them? A. No.

Q. And for whose account did you deliver them to that bank? A. I do not remember, but I believe it was I. G. Farben.

Q. Did you deliver any other securities at the same time? A. I do not remember.

Q. Did you ever own this parcel of a million in Farben bonds in your own right? A. These specific securities, no, no.

Q. And did you pay any money to that Holland firm on the occasion of the delivery? A. I don't think so, but I am not sure about it, do not remember. Many transactions go by that it could be—

8040 Q. You say they were delivered to you by the Holland bank, the Koopmannsbank, for the account of Farben. You said that was a simple banking transaction, to receive securities from one for the account of the other. A. Yes.

Q. Well, how can you be sure that you did not receive money? A. Well, I just remembered that, the bond side, the securities side, as you put this question, you see, but I do not

remember if there was any money transaction involved at the same time. It could be; it could not be.

Q. How could it be? A. Well, it could be, for instance, just theoretically, one client orders, requests, the Swiss bank to pay such and such amount against delivery from this or another side of such and such security, the security to be put in the deposit account of the client. That is perfectly normal.

Q. So Farben could have ordered you to pay out a sum of money to Koopmannsbank on delivery of these Farben bonds; is that what you mean? A. Could have, yes.

Q. But you don't remember whether that took place? A. No, I don't remember that, don't think so.

Q. But are you clear that you didn't ever pay out any of your own money on the receipt of these bonds?

8041 A. Well, I believe I am pretty sure, but what does it mean "own money"?

Q. Your personal money, not Farben's money. A. Well, in so far as a client, say I. G. Farben, has an account with us, and has, say, one million francs there, then we have these million francs anywhere, Swiss National Bank, or combined with all the other assets of other clients and our own, and if now the I. G. Farben as clients request us to pay such and such amount against delivery of such and such a sum, charging their account, well, then, it is taken out of the money at our disposal. That is for account of the client.

Q. I understand that. A. I don't know whether—

Q. Are you sure you didn't pay out your own money and not money that Farben had on deposit with you? A. I cannot say, as I am not sure if we paid money at all. I do not remember any money transactions combining with the delivery of bonds.

Q. Can you remember clearly that you contributed none of your own money to the entire transaction of the million Farben bonds? A. I cannot remember it clearly. I believe we did not.

Q. Does that mean that you can't remember whether you

8042 were the owner or Farben was the owner? A. Pardon me?

Q. Does that mean that you cannot remember whether you were the owner of these million Reichsmarks Farben bonds or whether Farben was the owner? A. No, it seems to me that according to the recollection, how I have been informed in Switzerland by my staff, it was I. G. Farben.

Q. But can you be clear that it was not you who was the owner of this parcel of Farben bonds? A. I think we were not. All this is according to my recollection.

Q. Do you remember whether you signed any obligations to pay money or you obligated yourself to pay your own money in connection with these bonds? A. No, I do not remember such a thing.

Q. Do you remember that when you delivered them to this other Swiss bank—Did you get paid for them? A. I don't remember that.

Q. Do you know the word "dun," d-u-n? A. D- —?

Q. D-u-n? A. D-u-n?

Q. Yes, when your creditor comes looking for his money he is dunning you; he is bothering you for the money.

8043 A. I don't know this expression.

Q. All right, we will use the longer phrase. Has any corporation or person been bothering you, been dunning you, for money in connection with a parcel of a million Reichsmarks of Farben bonds? A. Not to my recollection.

Q. Did any corporation bother you for money in connection with such bonds during the war? A. Not to my recollection. Well, I have the impression, according to your question, that you have a special transaction in mind, where you have documents, and although I am trying I cannot remember details. So if you would perhaps show them, that would perhaps refresh me.

Q. If somebody had bothered you for money in connection with a million Reichsmarks of Farben bonds during

the war, do you think you would remember it? A. I don't think so.

Q. It is too small a matter for you to remember? A. No, it depends on how complicated it was or—It is funny, my memory. Sometimes it works and sometimes it doesn't, and it is long ago.

MR. SCHWARTZ: Off the record.

(Discussion off the record.)

By MR. SCHWARTZ:

Q. Mr. Sturzenegger, among the things you mentioned as
8044 banking business you did for Farben was that of receiving remittances. A. Yes.

Q. Will you describe the course of the business you did for Farben in that respect? A. I. G. Farben, as you know, was a great client, and there were very often remittances that came in for account of I. G. Farben, and were then, in the normal banking way, credited to I. G. Farben's account.

Q. And these remittances came from all over the world, did they not? A. They came from all over the world. They came, I think, mostly from Switzerland, but they could come from other countries, too.

Q. You think as between Switzerland and the rest of the world, they came mostly from Switzerland? A. I couldn't say that, because a remittance may come from a foreign source and go to a Swiss bank and then come to us, which is, in banking, quite a normal way.

Q. But as to those, you may not know the source. But as between the sources that you did know, would you say that the remittances came mostly from outside Switzerland or mostly from inside Switzerland? A. You mean—During what period?

Q. Always during the war period, '39 to '45.

8045 MR. WILSON: And you refer to original sources as distinguished from via?

By Mr. Schwartz:

Q. Original sources, to your knowledge, the most original source known to you. A. To my knowledge, yes. That may be in some cases known and in other cases not known.

Q. But as to the original sources known to you or the most original source, would you say they came mostly from Switzerland or mostly from outside Switzerland? A. That is difficult to say. I guess perhaps more from the outside.

Mr. Schwartz: Off the record.

(Discussion off the record.)

By Mr. Schwartz:

Q. Mr. Sturzenegger, I would like you to read question 3 in the order of Judge Bailey of November 7. A. Aloud?

Q. As you like. It doesn't matter. A. "Did you ever receive instructions as to the transfer of money between any companies outside of South America and I. G. Farben during the period 1939 to 1945?".

Q. Now, Mr. Sturzenegger, I would like to amend that a little and make it read "outside Germany." I am interested

8046 in remittances from countries other than Germany. A. Other than Germany?

Q. To I. G. Farben. A. Yes.

Q. And that "South America" must have been a slip by me. So did you ever receive instructions as to the transfer of money as between companies or persons outside of Germany and Farben during the period '39-'45? A. Well, we received many remittances, that I remember quite well, from outside.

Q. I meant instructions from I. G. Farben, let us say. A. That I do not remember, because, if we have a remittance, we do not necessarily need an instruction, if the remittance is defined as a remittance being for a special firm or person.

Q. And was it customary that remittances for Farben be described as to for whom they were? A. In my recollection, yes.

Q. And do you remember the description that was used? A. I do not remember any case, but if we get a remittance from Union Bank or another one in Switzerland, saying, "We credit you francs 500,000 for account of I. G. Farben," that is the normal way how it can be done.

Q. The best description, of course, would be "for the account of I. G. Farben."

8047 A. Yes.

Q. And you must have received many such. A. I think so.

Q. Do you remember receiving any under other descriptions than I. G. Farben but which were intended for I. G. Farben? A. No, I don't think so. Maybe for Laenderbank.

Q. Does that mean that Laenderbank means I. G. Farben? A. No, that is just—Not at all. Laenderbank doesn't mean I. G. Farben, but I remember that many remittances went for Laenderbank, and I thought that when remittances came from a source that was more interesting for I. G. Farben that then Laenderbank had them received for account of I. G. Farben. That is a conclusion.

Q. By "sources interesting to Farben" you mean from sources that you would expect would be sending Farben money? A. Well, we very often received remittances for I. G. Farben, so that it was clear that these countries were in some way interesting—

Q. Were what? A. Were in some way causing remittances to I. G. Farben, were of interest to I. G. Farben.

Q. Do you mean that you learned from the pattern of these remittances who were the remitters who were customarily sending money to I. G. Farben? Is that what you mean?

8048 A. Well, in some cases it may be like that.

Q. And then do you further mean that when these remitters remitted money for Laenderbank, you thought that the money was destined for Farben? A. Sometimes, yes.

Q. Did Farben ever discuss with you the pattern and

rrangements for receiving remittances for their account? A. Not to my recollection.

Q. Do you remember any discussion with Farben as to whether you would receive remittances under a word which would mean I .G. Farben but which would not say I. G. Farben? A. I do not remember any such arrangement, but I wouldn't exclude it, the possibility that we, as is usual in banking business, sometimes received remittances without giving more details or just giving—Well, as we put it, this way, without giving the name of the party who had caused the remittances, if that is the question you were asking.

Q. But did you also receive remittances without giving the name of the party for whose benefit the remittance was? A. That is possible, too.

Q. And how would you learn for whose benefit the remittance was? A. Well, I think that it was rather or more or less exceptional, but if we received, for instance, from the same

8049 source—had received before remittances for I. G. Farben, when we received from the same source a remittance without giving the destination, then, in such case, I think that one of my staff perhaps asked, "I expect this is a remittance for you."

Q. Asked who? A. Asked I. G. Farben. That is, the firm for whom similar remittances were made before.

Q. You asked Farben, "Is this money for you, Farben?" A. I have never done it, but I think that in some cases my staff has done it.

Q. You mean done it without asking the sender of the money whether it was for Farben? A. Maybe.

Q. Well, isn't that illegal, Mr. Sturzenegger? A. No, not at all.

Q. To give money to a person when you have received it without any mention of— A. We didn't give it before making sure.

Q. Oh, I see. Then you wouldn't credit it to I. G. Farben

before checking with the sender of the money? A No, I don't think so.

Q. I see. But some of your staff, at least in some cases, on receiving money without a destination, would ask I. G. Farben whether it was for them, Farben.

8050 A. I think so.

Q. Well, wasn't that the practice, Mr. Sturzenegger, that you carried on by arrangement with I. G. Farben? A. Well, I couldn't say whether that was a special arrangement or if it was just a habit. I didn't remember that. I only remember—

Q. Why should it have been a habit, Mr. Sturzenegger? A. Well, take the example that from a special source during the years there are always or very often remittances, and then it is probable or not uncommon that—Well, over the phone, for instance, when the subject is talked over and the man on the I. G. Farben side says, "Well, as often as you receive remittances from this source, handle it this or that way." Then, when similar cases are repeated often, it is rather common to make such an understanding if it is necessary.

Q. I assume you received remittances for other people than I. G. Farben. A. Remittances?

Q. For the benefit, for the destination, other than I. G. Farben. A. Yes.

Q. Can you tell us one or two or three? A. I couldn't remember. Mostly they were for I. G. Farben.

8051 Q. So you received so many for Farben and so many from the same sources that even when they did not mention the destination you assumed they were for Farben? A. Only perhaps in some cases, and I think the normal way was that there was always a set destination, I. G. Farben.

Q. Was that normal even during the war, that the remittance said "Destination Farben"? A. I think so, or Laenderbank.

Q. And those that did not say Farben—You had no

specific arrangement with Farben that it meant Farben nevertheless? A. Not to my knowledge.

Q. Do you remember receiving any remittances during the war without a destination where you later found out that it was not I. G. Farben? A. May I ask you to repeat the question?

MR. SCHWARTZ: Read it, please.

(The pending question was read by the Reporter.)

THE WITNESS: Oh, of course, we received many remittances that were not for I. G. Farben.

MR. SCHWARTZ: That is not my question, Mr. Sturzenegger. Will you read it again, please?

(The pending question was re-read by the Reporter.)

THE WITNESS: No, I do not remember.

By MR. SCHWARTZ:

8052 Q. Do you remember only those remittances without a destination which turned out to be for I. G. Farben? A. No, I do not even remember those. Only I said that is possible, that sometimes it was made so, that I have been informed by my staff that is was made so sometimes.

Q. Then such instances took place. You have been definitely informed by your staff that such instances took place? A. Yes, but it seems not to have been the normal course.

* * *

8056 Q. Mr. Sturzenegger, I give you the photostat of what has now been marked Exhibit 34-11527 in German and ask you to read it.

(The witness examined the document.)

A. I have read it.

Q. You will note that it appears to be a typewritten memorandum within I. G. Farben in Frankfurt from the Banking Department, signed ppa. Baugert, to various other departments of Farben: Management Department Dye-

stuffs, Management Department Chemicals, Sales Dyestuffs China, Sales Dyestuffs Japan, Sales Dyestuffs Latin America, Sales Dyestuffs Netherlands Indies, Special Bookkeeping, and Customers Bookkeeping/Abroad. It is dated 6 December 1939 at the top, and its subject is, "Remittances from or through U.S.A." And it reads somewhat as follows in translation:

"By request of our Central Finance Administration,

8057 Berlin NW7 you are requested unless you have done so already, to advise everyone abroad telegraphically that in all remittances which for technical reasons can go by no other way than via New York, for the time being, in no case our name and/or the designation of 'Lebab' be used. These amounts should be transmitted exclusively to or in favor of Messrs. Ed. Greutert & Cie, Basel 2, without any further addition (thus neither I. G., nor the name 'Lebab', nor the name of the representative or the customer should be mentioned). Furthermore it is not necessary that the representative advises 'Greutert' telegraphically; the usual telegraphic notice to Frankfurt is sufficient.

"In order to enable us to notify 'Greutert' for every transfer executed, and in order to supervise the arrival of funds we require, of course, immediate notice, in duplicate, from each sales department, of intended or executed remittances."

Then the signature, "ppa. Bangert."

Then in the lower lefthand corner there is typed under date of December 13, 1939, signed "Banking Department," a statement reading: "Document was shown to Mr. Rong while he was here on December 8/9."

Now, Mr. Sturzenegger, does this describe the method by which remittances came to Farben through your firm from or through the United States?

8058 A. Well, according to my memory and recollection, as I told you already this morning, they were mostly

with denomination. I didn't exclude the possibility that it may have been made without. This seems to be something like an internal note, a reference that it should be generally made. I do not remember that it has been handled. May have been handled so.

Q. Have you ever seen a copy of this before this last year 1949? A. Of this?

Q. Yes. A. No.

Q. Did you receive a copy of it from Farben? A. No, not to my recollection.

Q. Did you receive copies of similar general arrangements for the transfer of remittances? A. Not to my recollection.

Q. What is Lebab? A. Lebab is sort of an abbreviation of Laenderbank. It means Laenderbank.

Q. It is the cable address for Laenderbank? A. I'm not sure. I think it's the cable address or other abbreviation generally known for Laenderbank.

Q. And this memorandum states that everyone abroad is to be notified that remittances which cannot go except

8059 through New York are not to use the name of Farben or Lebab. They are to be sent to you without any designation, and notice is to be sent to Frankfurt. That is right, is it not? A. That's the translation.

Q. Then when these remittances that you spoke of came without any designation, was it necessary to ask Farben or had Farben already told you that the remittance was coming? A. Well, that I do not remember the technique, but I am sure that in some way we had to make sure that this remittance was for Farben and not for others. That is highly probable that we had to make sure in some way.

Q. You said that when a remittance came without a destination people in your firm called Farben to ask whether it was for them. A. Well, that seems to me would have been a natural arrangement.

Q. Now, that you have read this, do you remember pei-

haps they didn't have to call Farben but that Farben had already notified them it was coming? A. I do not remember. May have been the case.

Q. You also said when I expressed surprise that you gave Farben money that came from somewhere else that you checked with the sender first before you credited the money to Farben. A. Checked with the sender?

8060 Q. With the person who had sent the money.

A. Well, I do not remember that I mentioned the sender. It is only natural that of course a banker always must make sure that a remittance received goes to the right place of destination and not to another one. Otherwise he would make himself liable. But how it was done technically I really don't remember.

Q. Well, this morning I expressed surprise that you should credit Farben with money merely on Farben's word that it was intended for them, and you said, "Oh, no, we check with the sender of the money." Not in those exact words but you said that you checked with the person who had remitted the money. A. Well, in many cases that may have been also the case. These are technical details which I do not remember.

Q. Could it have also been the case that as the remittance came in or shortly thereafter you received word from Farben that such and such a remittance was for Farben? A. Please may I ask to repeat?

MR. SCHWARTZ: Read the question.

(The reporter read the pending question.)

THE WITNESS: Could have been the case.

By MR. SCHWARTZ:

Q. But you don't remember whether that was the case?

A. No.

8061 Q. And you don't remember that it was the case that you checked with the sender instead of receiving word from Farben? A. I do not remember a special case.

Could have been done this or that way; in any way we had to, of course, make sure if there were not enough items combined with it to whom belongs this remittance.

Q. Well, this states that a large group of people—everyone abroad—was notified to send remittances through the United States merely to you. Now, if that actually took place there should have been a large number of remittances, shouldn't there? A. Well, there were no doubt many remittances.

Q. Well, can you remember then that it was the pattern that remittances going via New York came to you without mention of Farben or Lebab? A. No, I cannot remember that.

Q. Can you remember that it was definitely not the general pattern? A. No, I couldn't. I had the recollection that generally it was with denomination, but I am not sure. I have no idea. I have no recollection.

Q. You note the date of this is December 6, 1939, Mr. Sturzenegger. A. Yes.

8062 Q. Do you remember any changes in the method by which remittances were designated at about that period, the beginning of the European war? A. No.

Q. You don't remember whether say before the European war remittances came with "Farben," and shortly after the war they stopped having a designation on them? A. I couldn't say that. I am sure that, or I think it highly probable that, before the war sometimes remittances came in without the denomination, and I should say that it is not unusual in banking.

Q. These remittances that you speak of before the war, you mean for Farben as well? A. Yes.

Q. You haven't remembered anybody for whom you received remittances in this manner other than Farben? A. I couldn't say just now, no. I did not remember this one. I do not remember the other ones.

Q. Did you ever discuss with anybody in Farben these questions of remittances without designation? A. Not to my recollection.

Q. Did you know a Mr. Rong? A. Yes, I know him.

Q. What was his job at Farben? A. He was authorized to sign as procurist of, if I am

8063 not wrong, Finanzabteilung. Well, he occupied himself with credit matters and other financial matters.

Q. Was he head of Finanzabteilung in Farben? A. No.

Q. Was he the head of any other department in Farben? A. Well, I do not know how exactly his position was as to superiors or inferiors. He was only procurist. He was, if I am not wrong, not a director.

Q. Among the people to whom this memorandum was addressed, the divisions of Farben, there are four sales dyestuffs divisions, one for China, one for Japan, one for Latin America and one for the Netherlands West Indies. Now, as a matter of banking practice in about that period, wasn't the fact that remittances from those places to Switzerland had to go through New York? A. No, not absolutely. You mean remittances from, for instance, South America?

Q. China, Japan, Latin America, Netherlands Indies. A. I don't see any reason why they must have gone through New York. New York was a great financial center, so it was probably convenient; but—why? I cannot see the reason.

Q. They could have gone through New York then only for the simple reason the deposit would be in New York and a New York bank would execute the transfer?

8064 A. Yes, for instance; or good relations or technical convenience. I don't know.

Q. What could have been the technical convenience that required that remittances go through New York from these places? A. Well, if—but please, it's pure speculation—

Q. No, I hope I am drawing on your knowledge as a banker. A. Well, but there is no recollection as to this respect. I only as banker would say, would explain it the following way:

The dollar is one of the free and best known currencies. Therefore, I think that very often also manufacturers or

sales or dealers of other countries took a basis for their transactions the dollar currency, and as the center of the dollar currency is New York it is quite simple and natural that such transactions are handled via New York. That is one reason that comes up just now to me. Mustn't have been this way.

Q. As Farben's banker, as the person who received remittances for Farben, can you tell us why it should have been to the advantage of I. G. Farben to receive remittances through you without a designation that the remittance was for Farben? A. May I ask you please to repeat? I didn't understand
8065. the first part.

MR. SCHWARTZ: Read it, Mr. Reporter.

(The reporter read the pending question.)

THE WITNESS: Well, I do not know why actually they did it. May be that considering the circumstances that it was not always recommendable to name I. G. Farben's name. That's speculation why they did it. But that would seem to make sense.

By MR. SCHWARTZ:

Q. I didn't understand you because you used the word like "recommendable." A. Yes.

Q. I didn't understand that.

MR. WILSON: Read the answer back so Mr. Schwartz can hear it.

(The reporter read the witness' answer.)

By MR. SCHWARTZ:

Q. I did not understand what you meant by "recommendable," and so on, Mr. Sturzenegger. A. Well, the States, the United States, were not at war with Germany, but other than that, of course, it was commonly known that they were not very friendly to Germany and that there were—well, handicaps in dealing.

Q. Do you mean that because it was felt that the United States and Germany were not friends that Farben did not
8066 want anyone in New York to know it was receiving money? A. Well, that's speculation, but if you ask me if I could find myself reasons why Farben should have made such a scheme, that seems to be a more intelligible reason from the Farben viewpoint.

Q. Any other reasons that you can think of, considering, as you said, the circumstances and also considering the date? A. Well, other reasons would be reasons of normal business secrecy as it is observed quite generally in business. For instance, that's again just speculating to give you an idea, not to make it myself clear or right that it could have been made. For instance, if I. G. Farben expects a number of remittances from various countries and for reasons of convenience or I don't know what would like to concentrate a certain amount of these remittances with one banker in Switzerland, say my firm, well, such remittances normally do not go directly to my firm. They go via other Swiss banks before, foreign banks. And it is conceivable that any business concern—in this case I. G. Farben—has a certain normal business secrecy interest that not every bank can check exactly how great are the amounts that now come from this country, from this source.

That is imaginable. I think that is the manner how American firms would handle their affairs. Absolutely the same way. I think it's just reasonable protection also against
8067 rivalry or—I don't find the right word, but business "konkurrenz."

Q. I am more interested in the purposes of the I. G. Farben than in the purposes of an American firm, and you were the Farben banker. A. One of the Farben bankers.

Q. One of the Farben bankers. Right. You said that a firm might want to concentrate money in one country, in one firm, say in your firm, for reasons of convenience. Can you

elaborate on that from the point of view of your knowledge of Farben? A. Pardon me?

Q. Can you elaborate on that thought of yours from the point of view of your knowledge as a banker of Farben? A. Can you elaborate? I'm sorry.

Q. Can you explain to us your thought that a purpose behind such an arrangement might be to concentrate money in Switzerland in your firm? A. You mean the thought would have been just to concentrate certain remittances with our firm, with my firm?

Q. Yes. A. Well, I think it looks normal in view of the old, very friendly business relation that undoubtedly existed, and, on the other hand, I would say it was in some way practical to—Yes, to concentrate certain amounts and to have it at one

8068 spot in order to be in a position to dispose, if needed, easier of the money. I have no idea what the I. G. Farben had with other Swiss banks. I have no doubt they had accounts too. But here it seems that great remittances came in via our firm. That I remember quite well.

Q. And what were these practical reasons toward making the disposing of the money easier? A. Well, Switzerland was very near to Germany, had a sound currency, so I suppose German firms had a natural interest before the war and of course during the war also to keep cash money, if possible, in this sound Swiss currency. In such a case it is natural that they are kept in the land of the corresponding currency, say in Switzerland.

Now, I don't know what they kept with other Swiss banks but I am sure they kept—(pausing)

Q. So the reason or one of the reasons these remittances came to you was that Farben wanted to concentrate them with your firm? A. It seems so; otherwise they wouldn't have done it.

Q. And your firm had had old and friendly business relations with Farben? A. We had from a long time ago, as you know, friendly business relations.

Q. And they wanted to keep their money in a sound
8069 currency? A. Well, I imagine so, because they were mostly, according to my recollection, Swiss franc amounts. Otherwise they would have requested us to convert it into other currencies.

Q. I think you mentioned two reasons why Farben had its remittances come through you, the first having to do with the unfriendly relations between the United States and Germany, the second the concentration of money in the Swiss currency in your firm. Are there any other reasons that Farben had? A. These are just possible reasons which make handling of the matter reasonable to me. I do not know what I. G. Farben thought of it and what thoughts they had or if these were the thoughts, if they had other thoughts. Well, that's not up to me as banker to decide or to make with.

Q. Are there any other reasons you can think of that Farben might have had for following this practice? A. Well, I have mentioned reasons of secrecy. Then what I named before—this unfriendly tendency, commercial, business, political tension. I think these should be principal reasons in my eyes. Could have been others. I cannot exclude other reasons.

Q. Could one of the reasons have been that Farben desired to keep a secret its connections abroad?

8070 A. Well,—

Q. To keep it a secret as to who was remitting the money to it from abroad? A. That may be, but I refer to what I have told in this connection.

Q. Could another reason have been that remittance from New York to Switzerland which mentioned the name of I. G. Farben might become known to Great Britain and France? A. Could have been the case also.

Q. You knew, of course, didn't you, that in that time that Great Britain exercised a certain censorship over trans-Atlantic communications? A. Well, that's true.

Q. And as a banker you knew too that if Great Britain

intercepted a communication between New York and Basle, transmitting money for the account of Farben that Great Britain would not feel very kindly toward you? A. Sure. I think that is quite reasonable that I. G. Farben, thinking of this obstacle, which I didn't remind at this moment, thought to make the flow of the remittances surer. At this time the United States were not yet at war with Germany.

Q. You were put on the British black list, were you not, Mr. Sturzenegger? A. Yes.

8071 About when? A. Relatively early. I do not remember the date, but rather early.

Q. Relatively early in the war? A. Yes.

Q. And you were put on the American black list, I think? A. Yes. I think they copied it from the British.

Q. Could another reason for Farben to have followed this practice, Mr. Sturzenegger, have been that if money once came in to Germany the German financial authorities made great difficulties over letting it go? A. Made difficulties?

Q. Over allowing the money to go out again. A. Well, but that wouldn't be a reason to make the money come via my firm, or perhaps I didn't get your question quite.

Q. I think you did.

MR. SCHWARTZ: Read it back.

(The reporter read the question and answer.)

THE WITNESS: Well, I do not see, considering your question, that under this viewpoint it should have been handled this way. It is probable that I. G. Farben had, of course, when the remittances came in, in which Germany was interested from the currency viewpoint, had, of course, always

8072 to contact authorities, I suppose, to keep the reserve or to make from this money new remittances for other purposes. That I think was general usage in Germany with respect to the currency restrictions.

Q. I see. Do I understand that you mean that the German finance authorities had an equal control over Farben's

money whether it was in Germany or with your firm? A. I think that they had no control, but I think every German firm was under certain prescriptions and obligations to report their foreign currency funds to the proper authorities.

Q. And so you would assume that Farben, reported it whether they had it at home or in Switzerland, would you? A. Yes, of course, because that doesn't make any difference. If we have received remittances for account I. G. Farben, then, of course, we have credited I. G. Farben in the books and sent credit advice, and that was no secret at all. I think to me it doesn't make, in my opinion, any difference whether or not currency reserve or whatever it may be is kept there or with the Union Bank or the Swiss Bank or Sturzenegger or even in a German firm.

Q. So from the point of view of control over the money by the German financial authorities you think it would have made no difference whether the money was with you or in Germany?

8073 A. No, I don't think there was a great difference.

Q. Did you know a Mr. Bangert in the Banking Department of Farben? A. No, I do not remember this gentleman. I remember the name no doubt.

Q. That is "Bankabteilung." What is the translation of "Finanzabteilung"? Could you help us? A. Finanzabteilung?

Q. You mentioned Mr. Rong or somebody else was in Finanzabteilung. A. Yes. That is perhaps not quite right. He was in Berlin, if I'm not mistaken, and there was a Zentralfinanzverwaltung, central finance administration, and how this was organized I do not know. I only know that Mr. Rong had to do with especially credits abroad and with financial matters, technical things, and so on.

Q. Am I right that you remember that he was in Zentralfinanzverwaltung,—A. I believe so.

Q. —the abbreviation of which is "Zefi"? A. Exactly.

Q. Do you remember whether he was head of Zefi, Central Finance? A. He was head?

Q. Do you remember whether he was head of Central
8074 Finance? A. No, I don't think so.

Q. Whether he was second in command? A. Second or third I think in command was one or more directors. Not Mr. Rong.

Q. You have given us several reasons why Farben might have found it valuable or advantageous to send its remittances through you in this manner. Am I right that you said that all of these were just speculation on your part? A. The reasons?

Q. Yes. A. Yes.

Q. You never discussed with I. G. Farben any of these reasons? A. No, I didn't. At least not to my recollection. But I do not exclude that for instance as it was mostly in the field of technical questions that for instance may have been discussed between say Mr. Rong and Mr. Werder or one of my staff or Mr. Haller who has died now.

Q. I see. You mean such things as reasons for doing this weren't of importance enough for you to— A. I didn't say that, but I just do not recall an occasion where it was discussed. I do not recall especially a discussion about these points. But I cannot exclude the possibility that there have been some discussions.

8075 Q. Do you remember any discussions you personally had with people in Farben about their replacement of their money over the world or how their remittances ought to flow or such rather large problems? A. No, I do not recall especially, but this gentleman from time to time —I had for instance visits with Mr. Rong who occupied for instance himself with this liquidation credit, and I cannot exclude that many other topics were perhaps discussed too on such occasions.

Q. You dealt with Mr. Rong on that liquidation credit of eight or nine hundred thousand francs you mentioned this morning? A. Yes, that's right. I remember that I talked with him about it.

Q. What else did you deal with Mr. Rong about during the war? A. What did he do?

Q. What else did you deal with Mr. Rong about during the war? A. Well, that I cannot remember all; but as he had to occupy himself with credits among others, so I suppose that other credit questions you touched this morning were probably discussed with him too or money dispositions. Just if—well, say the account of I. G. Farben showed a certain amount, and very often I think that Mr. Rong—well, ordered

8076 then to make this or that position, to transfer such and such amount to another Swiss bank, and so on and so on. In this way I had to do with Mr. Rong. May be that there were other matters which undoubtedly can be shown from your files.

Q. Do you remember any of the other matters you took up with Mr. Rong? A. Not at the moment, but if you refresh me I am sure that others will come to my recollection.

Q. But you don't remember any discussion with anybody in Farben about these reasons for Farben to send its remittances with you? Is that right? A. I do not recollect such discussions. I cannot exclude such a possibility.

Q. And do you remember whether this plan to have remittances come through you was communicated to you in advance? A. That I do not recollect.

Q. I should think it was unlikely that you did not have advance notice of them. A. It seems unlikely. Unlikely.

Q. And do you remember any discussions of the whole plan? A. No, I do not remember.

Q. On December 6, 1939, the date this Exhibit 34 is dated, I see in there it describes your firm as Ed. Greutert

8077 & Cie. A. That's right.

Q. Mr. Greutert had just died a couple of months before that? A. Yes, on September 9th.

Q. And the name of the firm was not changed to H. Sturzenegger & Cie. until about when? A. Until the beginning of 1940.

Q. About January or so? A. January or so. I don't know the exact date, but it can easily be ascertained.

MR. SCHWARTZ: Will the reporter please mark Document 12975?

(The document and translation referred to were marked for identification as Defendants' Exhibit No. 35-12975.)

MR. SCHWARTZ: Here too, Mr. Wilson, I have an extra copy of the translation. From a note on the translation I see you have inspected and copied. Well, I see that you have inspected; I am not sure about copied.

By MR. SCHWARTZ:

Q. I hand you the photostat of the German, Mr. Sturzenegger, of Exhibit 35.

(The witness examined the document.) A. I have read it, Mr. Schwartz.

3078 Q. There is a photostat of I. G. Farben letterhead, with the word "Durchschlag" printed at the foot, which means, I understand, "carbon copy." A. Yes. Carbon copy.

Q. And this letter has stamped signatures "Scherer" and "Bachem," of I. G. Farben in the Central Finance Administration in Berlin, the Zefi we mentioned, and it is dated April 18, 1940 and addressed to the Director of the Regional Office of the Reich Finance Ministry, the Foreign Exchange Office.

The subject is: Sociedade de Anilinas Ltda., Porto. It states:

"In reply to your letter of April 13, 1940—No. 2802/31 A/V.G. we beg to inform you of the following:

"In order to avoid that the connection between our agencies abroad or their partners and us appears to the outside, all remittances to us are first made to the banking-house of H. Sturzenegger & Cie., Basle, without mention of our name, under a key-word, from which, the banking-house of Sturzenegger understands from an arrangement, that this

amount is designated to us and has to be credited to the Deutsche Laenderbank Aktiengesellschaft on a special account, also without mention of our firm. All amounts paid into this account are credited to us on current account by the Deutsche Laenderbank Aktiengesellschaft, with the
8079 reservation that we confirm to have received the amounts for our account. These confirmations are constantly given by us to the Deutsche Laenderbank Aktiengesellschaft.

"The sfrs. 10,000.—in question, representing equivalent of Escudos 60,000.—sent by Mr. Schwair, have been received in this way. An express confirmation of the banking-house of H. Sturzenegger & Cie. that the amount is for us, is therefore not required anymore.

"We therefore ask you to forego your demand for submitting a corresponding confirmation of Messrs. H. Sturzenegger & Cie.

"Heil Hitler.

"I. G. Farbenindustrie Aktiengesellschaft.

"Signed Scherer. Signed Bachem."

I noticed you were nodding your head throughout, Mr. Sturzenegger. A. Pardon?

Q. I noticed you were nodding your head throughout. I gather you were confirming my translation, were you not? I don't mean to hold you to my translation, but did you find it a reasonable translation? A. Yes, it's reasonable.

Q. Now, this appears to be a statement by I. G. Farben, Mr. Sturzenegger, that the remittances went through your firm under this arrangement here stated in order to avoid the
8080 outside learning of the connection between Farben agencies abroad and Farben. Does that refresh your memory as to whether that was one of the purposes Farben had in making this arrangement? A. No, it doesn't refresh, but it seems to me very near to one of the speculated

reasons I gave you—business commercial secrecy, the interest in it.

Q. You seriously mean to say that in none of your discussions with I. G. Farben during the war period did anybody say that that was one of the reasons that they were doing this for? A. No, I don't remember that, but why shouldn't it have been discussed? It seems very probable that it has been discussed. But I do not remember such an occasion.

Q. It seems to me probable too.

This says that the remittances go to your firm, and you notice that it is now H. Sturzenegger because it is April 1940, without mention of Farben's name, under a key-word. Now, what key-word is being referred to there, Mr. Sturzenegger? A. That I do not remember.

8081

Q. You don't remember any key words? A. Yes, I remember, but the designation "key word" is perhaps not right, but one of the words was Lebab, that often remittances were made under.

Q. I see. So Lebab is the key word. A. It could refer to such, or a telegraphic abbreviation, whatever you will take it, but it is an abbreviated expression which doesn't make it clear at first glance to anybody who it is, as always with telegraphic addresses or abbreviations.

Q. But an ordinary telegraphic address would make it clear to anybody who had ever seen the letterhead? A. Yes.

Q. So this key word could not have been an ordinary telegraphic address. A. Well, I am not sure, but I don't think that Lebab is all the telegraphic address. I am not sure.

Q. I think you told us before it was the cable address of Laenderbank. A. Well, it can be, but you can fish it out for me in a few minutes.

Q. Now, Mr. Sturzenegger, you did banking business for Farben all during the war. You and I. G. Chemie owned the

Deutsche Laenderbank. A. Yes.

Q. You remitted countless items to Deutsche Laenderbank in your time. Do you mean to say you don't know what the cable or telegraphic address of Laenderbank is? A. No, for the moment, not. Maybe it is Elbe. At the moment one abbreviation—

Q. What is that? Elbe? A. Elbe.

Q. Spell it for me, please. A. E-l-b-e-. For the moment both names are well known to me, but I couldn't say with certainty now which cable address is the official—

Q. And which is it? A. Well, another abbreviation.

Q. Or secret abbreviation? A. Or secret. Just not a telegraphic one.

Q. You weren't before trying to give me the impression that Lebab was the cable address? A. I don't know.

Q. Because you don't really know it? A. Please? Well, I thought that would be entirely stupid for me, as you, at first glance from the paper, can make entirely sure what is the cable address. I would be utterly unreasonable to make you believe that another address

8083 was the cable address than what the real cable address was.

Q. And you don't know, you can't say, whether Lebab is the public cable address or the known public designation? A. I should—I am inclined to say, rather, nonpublic.

Q. And that Elbe is the public cable or telegraph designation? A. I think so, but I am not sure at the moment. I think so, but I—

Q. And what was the key word in the remittances which came to you which did not mention Farben? A. What were the key words? Well, if Lebab is not the official telegraph address, then I should say probably it could have been Lebab. Of course, if it was the official cable address, then probably not.

Q. I see. But, whichever it was, Lebab or Elbe, it was a key word which meant Deutsche Laenderbank? A. Yes.

Q. I see. And which would not have been known to mean

Deutsche Laenderbank by anybody outside? A. Anybody else? Well, I do not know whether the other Swiss banks knew it also. That is perhaps possible.

Q. But if they knew it, you understood this non-official word to be known only to Farben and to such people that Farben desired to tell it to?

8084 A. Yes, or such people, perhaps, who formed their own conclusion. If they had seen many remittances, they came to the result, probably, Laenderbank?

Q. Well, if it was non-public that it meant Laenderbank, how could anybody draw the conclusion that it meant Laenderbank just from seeing a lot of remittances to you for Lebab? A. Well, it is, again, pure speculating, but I know that many remittances from abroad with the destination "Laenderbank" or "I. G. Farbenindustrie" came through other Swiss banks, well, before they—I am perfectly aware that many remittances of these remittances you are interested to know, remittances that came in from abroad, went through other Swiss banks, went via Union Bank or other banks. Just as an example, we were credited them from this bank to my firm and if there was already the denomination "Lebab" on such remittances, well, these people, of course, realized that it was always the same firm, and if they perhaps had an account of Laenderbank, too, the connection was clear. They were perhaps informed of the same code word. That I don't know. Otherwise they could draw conclusions. They perhaps knew that we had good business relations with Laenderbank.

Q. Well, they could— A. That is just to try to explain how others, too,

8085 could come to the result.

Q. Well, we are clear that they could come to the result that Lebab meant Laenderbank if Laenderbank had told them that Lebab meant Laenderbank. A. Not only then.

Q. Well, that is certainly one way. A. Yes, sure.

Q. If Laenderbank had an account with Union Bank and told Union Bank, "We are privately known as Lebab,"

Union Bank would know that Lebab meant Laenderbank. A. Sure.

Q. But how could they draw the conclusion that Lebab meant Laenderbank otherwise? A. Well, if great remittances always came to us, then maybe it is speculation in this direction.

Q. And what would have been the basis for that speculation? A. Because Lebab looks like Laenderbank, like an abbreviation, and because they, I think, knew that we had—Greutert & Co. or H. Sturzenegger & Co. had good and close business relations with I. G. Farben and the banking house Laenderbank.

Q. Didn't you have close business relations with anyone else? A. Well, but we received great remittances from abroad

8086 that—I don't know if there were similar remittances. It could be interpreted as probably not being this kind for our own, relatively small.

Q. And what made them draw the conclusion, then, that among your customers it was Laenderbank? What made them draw the conclusion that if it was not for you then it must be for Laenderbank? A. Well, I am not saying that they became sure of it, but I think it is probable, perhaps, that they came to such a conclusion.

Q. Wasn't it so that you received remittances almost exclusively for Farben and Laenderbank? A. No.

Q. You received remittances— A. That we received remittances on a very large scale, no doubt.

Q. But the remittances for Farben and Laenderbank were the only ones that came under key words, were they not? A. Oh, I wouldn't say that.

Q. Can you remember one other instance of a remittance coming under a key word? A. No, I do not even remember when the remittances for I. G. Farben or Laenderbank came

under a special key word, unless you consider this Lebab a special key word,

8087 because this word—and it often was used, I remember quite well.

Q. Well, you have told us that either Lebab or Elbe was the key word. One was the key word and one was the official address. A. I didn't tell you so. I said if it is possible that one of the both was not the official telegraphic address, it was meant as a key word, but I do not exclude in this letter the thought of another key word which I do not remember. I do only remember this key word, if it was considered as a key word, Lebab.

Q. This letter, exhibit 35, goes on to say that remittances were first made to your firm without mentioning Farben, under a key word, "from which the banking house of Sturzenegger understands from an arrangement that this amount is designated to us and has to be credited to the Deutsche Laenderbank." A. Yes.

Q. Now, what was the arrangement you had with Farben? A. I had no special arrangement I can remember. The arrangement could have been telephonic understanding between Mr. Rong and members of my staff that for the time being and for the future, as long as no counter order is given, remittances that come in without the Laenderbank or the I. G.

8088 Farben being officially named as receiver, come in, say, with a key word, Lebab, or so, are considered as destined for us. And as from long years' business connection we knew that these people were very reliable and didn't lie, well, there was no risk in it, it was quite natural to handle that according to the wish of the client.

Q. Well, was that the arrangement? You say it could have been. A. No, could have been. Here from this letter it looks as if there had been arrangement. I do not recall this arrangement but I imagine that it could have been this

way. If there had been written arrangement, no doubt it is in your files and it is much clearer if you show it to me.

Q. Question 8 in the order of November 7 reads: "Isn't it the fact, Mr. Sturzenegger, that you customarily or often between 1939 and 1945 received remittances from outside Germany for the account of Farben under code words?" Do you feel that after your testimony you can answer that with the single word "Yes"? A. No, I couldn't say. It depends on what you understand as often. Often—I could say "Yes" but always if you consider this observation of was Lebab a code word—As I told you, I do not remember other code words. There may have been.

8089 Q. Well, let's define "code word", you and I, as a word which in these circumstances you knew and I. G. Farben knew but the British authorities did not know. A. Yes.

Q. Has that been your understanding of "code word" and "key word"? A. No, "code word" is just a general expression used all the time, very often, in banking business, if some party interested has the wish that certain facts will not be obvious for a third not interested.

Q. Third party. A. Party.

Q. All right. I think we have a good working understanding of "code word". So you would answer the question "Yes" if it merely read "often" but you don't feel it should be answered "Yes" if it reads "customarily"? A. Well, I make this reservation because, if I am not wrong, many remittances, for instance, from abroad my firm had received, especially from South America, were not—only to a minimum degree—continued after '42, if I am not wrong, and therefore such remittances—but I do not remember now—if customarily received under code words couldn't be received afterward if they didn't come in. I only want to say I must make this reservation. I cannot say we cus-

tomarily received remittances during the whole war
8090 period from abroad under a code word.

Q. I see. You mean that they declined in number or amount or both as the war went on. A. Yes.

Q. Is that what you mean? A. Yes.

Q. I see. So it might very well have been customarily and very often in the early years of the war but less often and less customarily in the later years? A. Probably, yes, and, again, I do not recall this key word. Payments we have talked of. I cannot speculate about the number, if the percentage was greater or lesser. I remember quite well that many remittances came in to my firm. That is doubtless a fact.

Q. And Farben's entire sources of income began to dry up as the war went on, did they not? A. Well, probably. They had more and more difficulties, of course.

Q. That should be a matter that you could help us very much on. You were at least one of Farben's bankers. You certainly should know something about Farben's sources of income. You said, for instance, these remittances began to decline as the war years went on. A. Well, according to my memory, the remittances from one part of the world, South America.

8091 Q. Declined? A. Yes, if I am not mistaken. That is my recollection.

Q. Did remittances generally to Farben through your firm decline as the war years went on? A. Yes. It may be that from the Far East they continued longer, to a larger degree.

Q. So by the end of the war, through your firm, Farben was receiving almost no money except from the Far East? A. Well, I think at the end of the war even the Far East stopped. I have no recollection about the dates, but anyhow they were much longer functioning than the others.

Q. This Exhibit 35, Mr. Sturzenegger— A. That is this one (indicating)?

Q. You have it in front of you, yes. The last two paragraphs speak of a specific remittance, Swiss francs 10,000,

representing the equivalent of escudos 60,000 sent by Mr. Schwair, and that an express confirmation of Sturzenegger is not required because it has come in in the way described in the letter. What would have been an express confirmation by your firm about the receipt of a remittance? A. Oh, for instance, it could be a communication, a letter, say, to I. G. Farben, "We have today, through intermediary, such other Swiss bank, received the sum of francs 10,000 for your account."

8092 Q. Do you call that a credit advice, perhaps? A. Credit advice, yes, "which we credit to your account."

Q. Well, I understood you to say before that whenever you received a remittance from Farben you sent Farben a notice that it had been received. A. Yes, but in such a case it looks as if that has been credited to Laenderbank. Then, therefore, we credited Laenderbank and Laenderbank seems to have credited I. G. Farben.

Q. I see. So in these remittances that came under the key words where you credited Laenderbank, you didn't have to credit Farben at all? A. No, because then we had the instruction—if we had an instruction—remittances coming in under the word Lebab, which meant Laenderbank, then we had naturally to credit Laenderbank, and it was of no interest whatsoever for us what happened afterwards. If Laenderbank had an arrangement with I. G. Farben, whether these or other amounts were destined for I. G. Farben, that we had no care about. We had only if a remittance came in under the word Laenderbank or an abbreviation or a code word for it, if the instructions were according to credit Laenderbank for such an amount.

MR. SCHWARTZ: Would you read that answer, please.

8093 (The answer referred to was read by the Reporter.)

By Mr. Schwartz:

Q. I noticed at the very beginning of that, Mr. Sturzenegger, first you were going to say, "We had the instructions," and then you said, "If we had the instructions." A. Yes, because I remember that the instruction, of course, must have been made, but I do not recall it. I refer to my aforementioned statement.

Q. And when you speak of instructions you must mean instructions from Farben, because this money was coming from Farben. A. Oh, yes, it could have been instructions also from Laenderbank.

Q. Would you take instructions from Laenderbank as to Farben's money? A. No, but if it didn't—in a case where perhaps we didn't know that it was I. G. Farben's money.

Q. You mentioned, too, that "It would be of no interest to us." You meant you? A. I meant my firm or myself. If the remittances were carried out, the banking business, the banking service ended and we had nothing to do with it.

Q. I see. You mean your relationship with Laenderbank and Farben was such that it was only a routine banking service you were giving them?

8094 A. Such carrying through of remittances, no doubt.

Q. That was routine? A. It was routine because such remittances were made often and there was nothing special in it, no problem for us.

Q. You don't mean routine in the sense that you did it for other people? A. No, I call routine something that is carried on more or less technically, automatically, if it is often in the same line, and if there is no new problem, as when I grant a new credit or so. It is just a credit note.

Q. I see. You mean that the service you were giving Farben and Laenderbank was a mechanical operation rather than a routine operation? A. I wouldn't go so far, but only say that the handling of such incoming remittances was simple, ordinary, routine banking function.

Q. You mean it could be done by any clerk in your office?

A. The carrying through, the booking, sure, the same as any other Swiss bank.

Q. Do you remember anything about the Sociedade de Anilinas Ltda., Porto? A. No, nothing at all.

Q. Do you remember it as a corresponding agency of I. G. Farben?

8095 A. I only remember that in documents you have showed me, during the last depositions, there were a number of similar names.

Q. None in Porto, I think. They were Latin American firms. A. That's right, they were in South America. I beg your pardon.

Q. Do you remember or know anything about this firm? A. No.

Q. You don't know that it is a sales agency for I. G. Farben? A. No.

Q. Or otherwise corresponding house for I. G. Farben? A. No.

Q. The individual's name in the next to the last paragraph, Mr. Schwair, does that name mean anything to you? A. No, no idea.

Q. We have been discussing these credits and the period of time they came in, Mr. Sturzenegger. We have been discussing it for some little time, and you have been thinking very hard about it. Can you give us any idea of the total amount of receipts you got between '39 and '45 for Farben in this manner? A. I cannot guess that. There were, of course, millions, and during the long course of years probably many

8096 millions.

Q. A hundred, two hundred, five hundred million Swiss francs? A. No, no, not such numbers, but millions, twenty, thirty—I don't know about it. I am just guessing, because there must be all corresponding credit notes in the German files. It would be simple additional work to come to the exact amount, I think, from your files.

Q. Would there also be corresponding notes in your files? A. For credit, yes, I think so. I imagine it.

Q. Your files, as a well-conducted banking house, should show every such receipt, should they not? A. I think they should. Well, it is in the books. It must be if there was an amount credited; it must in some way show up.

Q. Now, you have told us of what your subordinates did for Farben and Laenderbank during the war, but you have mentioned what you did only in one instance, a discussion with Mr. Rong on the liquidating credit. What other financial matters do you remember discussing with people of Farben during the war? A. Well, there is none special that comes up in my recollection, but I am rather sure that many topics were discussed.

8097 Such as—? A. From the general world situation up to more specifically interesting problems, probably. I wouldn't exclude that matters—well, remittances and, of course, credits, possible credits, credits they would have liked to have, and so on, were discussed.

Q. And others, perhaps? A. During the war?

Q. From '39 to '45. A. Sure, there were others but I do not recall just what.

Q. You can't remember a single discussion between you and anybody in Farben between '39 and '45 on a financial matter except the one with Mr. Rong? A. Of course, I remember. There were discussions, for instance, with I. G. Farben people concerning this I. G. Chemie dividend guarantee problem, and where I personally took part, and so on. It concerned my firm. But they were discussions with Farben people. And I think there were minor things, too. Well, it may be there were also discussions about certain of our interests in occupied countries.

Q. "Our interests in the occupied countries"? Whose interests? A. Of my firm.

Q. What were those interests?

8098 A. Well, I just—When you asked me, I remembered our participation in a credit given under the leading

of one of the big Dutch banking institutes, Amsterdamsche Bank.

Q. Can you tell us something about that? A. Well, we had a participation in this credit, which, of course, was granted before the war, against securities, and after the occupation of Holland there arose, of course, problems how such a credit could be repaid to us. That made discussions necessary.

Q. Well, who gave the credit and who received the credit? A. The credit was given by, if I am not mistaken, a Dutch banking Konsortium, and the head or the leading—I don't know what is the expression—was the Amsterdamsche Bank, and we participated in this transaction. It was given to I. G. Farben.

Q. It was a loan to I. G. Farben? A. From a Dutch banking Konsortium under the lead of the greatest or the most important Dutch banking institution, and we participated.

Q. And you put up part of the credit? A. A smaller part.

Q. A smaller part. And it was repaid and liquidated during the war? A. Yes, if I am not mistaken. I think so.

8099 Q. And so you may have discussed that with I. G. Farben, the repayment? A. Yes, yes, it came up, how to arrange this matter.

Q. Do you remember the amount of the credit? A. Well, it was in guilders, if I am not mistaken. I am not sure. It amounted to about, I think, 600,000 francs, counter value.

Q. About 600,000 Swiss francs? A. Yes. I am not sure about it.

Q. About? A. That is my recollection.

Q. And, of that, what part had you put up? A. I think one fifth. That was our participation, please.

Q. Oh, the 600,000 was your participation? A. Yes.

Q. I see. So the credit was about 3,000,000? A. Yes, about 3,000,000. That is about right.

Q. And that was repaid during the war? A. Yes, to my recollection.

Q. Did you take a loss? A. I don't think so.

Q. I see. I thought you had explained to us that Dutch credits from German debtors were frozen and couldn't be paid.

8100 A. Yes. Well, but in this case I am not sure if we had to take a loss. I think it was arranged in a somewhat similar way. We had to grant a new credit. The new credit was designed to repay the old one, and the new was repayable in installments. Well, that is to my recollection. I think that is the way it was done. It was paid in yearly proportions.

Q. So that is an additional new credit that you granted during the war to I. G. Farben? A. No, I couldn't say that, because this credit was—the destination of this credit was, if I am not wrong, to repay the old one, and so we had—I am not exact now how the construction was, but anyhow it was so that by temporarily paying a new credit amount we could secure the liquidation of this credit. Well, the details will be all in your files. But that is my vague recollection about this matter.

Q. About how much additional new credit did you give in order to get the whole thing repaid? A. Well, I think we gave, for a very short period, the same amount. The old was repaid, so that in fact it was something like a prolongation of one old credit.

Q. I confess I don't understand it. Did you lend them another 600,000 and did they pay you 1,200,000 back in a short time? Is that what it comes to? A. It comes to—Well, I wouldn't like to just guess and venture guessing, but my recollection is vague in this

8101 respect, but it is like that, that we had to pay for a very short period, maybe some days only or so, I do not remember, about the same amount, and that this sum was designed to repay us our participation in this Dutch credit, and then the new—Well, then our engagement, which was still in existence to I. G. Farben then, had to be repaid in installments. That is my recollection.

Q. Am I right in understanding this, that you lent them 600,000 Swiss francs for a very short time and they used that to pay you back? A. It looks like that.

Q. To pay back the old credit, and then the new credit of 600,000 they repaid to you in installments? A. That is my recollection, but it may have been otherwise. That was, it seems, the only possible way to get our money back.

Q. If you had not done this, they would not have paid you in installments? A. They would have had greater difficulties, I suppose.

Q. How could this have induced them to pay it in installments? It seems to me like a lot of bookkeeping. A. Yes, a matter of bookkeeping or a matter of talking it over with the authorities—I don't know. That was their side.

Q. Did they need some new cash to convince the authori-

8102 ties to give them permission to pay the old loan? A. I have no idea how they brought it before the authorities. We had nothing to do with that.

Q. But you didn't discuss with them why they wanted a new 600,000 for a short time? A. No, no. That is to say, I think this 600,000 were distinct to repay that. The matter was so that probably I asked, "How can we arrange the matter?" And then they thought it over and it may be in another trip they made suggestions along the line I mentioned to you. Well, exactly how it was done I do not know.

Q. And so this is an instance of a discussion of a financial matter with Farben? A. Yes, yes.

Q. This was important enough for you, and not one of your clerks? A. Yes.

Q. Can you remember any others? A. I am sure there were, but I do not recall one.

Q. Such discussions as took place, took place where? A. Oh, they took place in the premises of my firm.

Q. I see. I understand that you never visited Germany after the outbreak of the European war. A. Never, never.

I haven't been there since, neither. Since, I think, August '39 I haven't been in Germany.

8103 Q. But before the outbreak of the European war, you went about how often? A. Well, it was quite different. During the period '36-'37, when there was greater compensation, as we call it, made, the simplification of these financial relations was achieved. Then I was very often in Berlin. And afterwards, maybe twice, three, four times a year.

Q. Then it was no accident that you did not visit Germany after September 1939? A. Pardon me.

Q. It was no accident that you did not visit Germany after September '39? It must have been deliberate on your part. A. Oh, yes. During the war I didn't like to go and there were no absolute coercing reasons to go. There turned up sometimes gentlemen from I. G. Farben. They could go, of course, to Switzerland.

Q. I gather you regarded yourself, then, as anti-German. A. As—?

Q. Anti-German. A. Who regarded me?

Q. I gather you regarded yourself as anti-German. A. A funny question. I had this good business relation to which I was in a sense loyal. I appreciated many gentlemen

8104 but I hated the Hitlerism, as you did.

Q. And you deliberately did not visit Germany after September '39? A. Pardon me?

Q. And you deliberately and with intention refrained from visiting Germany after September '39? A. I wouldn't say that. If a coercing reason would have come up, perhaps I would have gone. Many Swiss business-men were temporarily in Germany. Also it was during the war, of course, more dfficult, rather difficult, to get the visa and all that, and there was no absolute need to do it, so I didn't.

Q. You mean there were some difficulties for a Swiss to go to Germany during the war? A. Yes, I should say so.

Q. On which side, the Swiss government side or the Ger-

man government side? A. I think the German side. You have got the visa and all that. And that was not so easy in these times, and for a Swiss, too.

Q. So was your refraining from going because it was too difficult or because you didn't choose to go? A. I didn't like to go, first, and there was no absolute necessity to go, neither.

Q. Your last visit, I think you said, was in August
8105 '39. A. I believe it was. I am not quite sure, but I believe it was.

Q. August '39 is a very famous month, Mr. Sturzenegger. Do you remember what took place then? That was the month before the war. A. Yes, war broke out in September.

Q. Was your visit there to I. G. Farben? A. Pardon me?

Q. Was your visit to Germany in August '39 a visit to I. G. Farben? A. Yes, it was, in Berlin.

Q. Do you remember what you discussed in that month of August '39? A. I remember at least one of the items that was discussed.

Q. What was that? A. That was—I remember a discussion in Berlin with several I. G. Farben gentlemen present, where, how shall I call it, difficulties, probable difficulties, in view of the tension in Holland and so on, were discussed, and I think it was at this discussion also, yes, our participation in the Chehamij came up.

Q. I am sure you are right in remembering that you discussed the world situation. It was very troubled then.
8106 You also mentioned, when I asked you about discussions with Farben during the war, the world situation, at the very beginning. Can you tell us more specifically what you discussed with Farben in August '39 about the world situation? A. Oh, that I cannot.

Q. You have no idea, no memory at all? A. All the aspects in view of the growing tension. It may be, naturally, the possible consequences of an outbreak of the war and all that you would discuss in such moments.

Q. Well, what would you discuss at such a moment with your German client, I. G. Farben? A. Well, I perhaps dis-

cussed more my problems, which were that we hoped for neutrality and were lucky enough to be in a position to keep that. But I think the greater problems were for the Germans. They, of course, were, as businessmen, very much concerned.

Q. And so you discussed the world situation with them? A. Yes, I am sure. I believe I did, it or other things. I mean, it may be that there were other matters. They always were asking for new credits, and you know the few credits we gave. We restricted ourselves very much during the times of war. It may be that such questions were discussed, but I do not remember the discussion with
8107 the exception that I remember these items about Chehamij were discussed.

Q. Do you remember that they asked for new credit? A. Oh, yes, they asked, for instance, for this participation in Chehamij. Therefore I am thinking of it.

Q. Did they ask for new credits otherwise? A. Well, they were very often asking for new credits.

Q. And did you— A. They were always in need, already long before the war, of foreign currency, and I am sure they had credit lines with other Swiss banks, and as a great enterprise they were always in need of foreign exchange.

Q. I am speaking about this: Did they ask you for new credits in August '39? A. I couldn't state that they asked me during this specific discussion, but I can quite well remember that they asked me several times during the war.

Q. Do you remember anything else that was discussed in August '39? A. Well, under Chehamij, I understand it was all connected.

Q. The whole Dutch ownership, the Mapro and Voorindu and all those others? A. Yes.

Q. You discussed that?
8108 A. Yes.

Q. Did you discuss with them the future of their banking business with you during the war? A. I don't think so, cannot remember. At least, the war was not yet broken out, only the tension was, of course, very severe.

Q. You mean that in August '39 you did not discuss with them what would be the course of your banking business with them if war broke out? A. No.

Q. Not at all? A. At least, I do not remember such a discussion.

Q. Did you discuss with them at that time what should be done with their deposits with you in the event of war? A. No, I do not remember that.

Q. Or what should be done immediately with their deposits with you, because of the possibility of war coming? A. Well, what could have been done? Transferred to other countries?

Q. You are the banker, Mr. Sturzenegger. A. Well, it depends on how one looked upon the situation. Nobody knew how it would turn out. Everything can possibly be discussed, but I do not remember, Mr. Schwartz, a specific item.

8109 Q. Did you discuss with them, for instance, your feeling of certainty that Switzerland would be neutral and that their money would be safe in your country? A. I don't think so.

Q. Who were the people with whom you had those discussions? You said several gentlemen in Berlin. A. I had such a discussion during my visit in August.

Q. In August '39? A. Well, I don't remember exactly, but I think Fahle or Krueger were there.

Q. Mr. Frank Fahle? A. Yes.

Q. And Krueger? A. Krueger, yes.

Q. And who else? A. Well, maybe Gierlichs, too. I don't know. Maybe Kersten, because the lawyers—maybe Kersten, I am not sure. Maybe von Meister. But I think that is more or less all. Maybe one or the other I cannot remember, but there were several gentlemen. I think Krueger and Fahle were there.

Q. And about how long did you stay in Berlin? A. I don't know. I think—

Q. A day or a month? A. Oh, perhaps one or several days, but not more.

Q. Do you think it was one or several? A. Well, perhaps —one is perhaps a little short.

8110 I suppose I should say, just from recollection, two, two or three.

Q. Did you discuss with Farben any matters concerning gold deposits they had with you at that time? A. I do not remember. I do not remember they had gold deposits.

Q. Haven't they always had an account with you in gold? A. Pardon me?

Q. Haven't they had a gold account with you? A. I do not recollect such a one. It may be that they have during a certain time had gold.

Q. Oh, I don't mean bars of gold, Mr. Sturzenegger. I mean a currency which is called a gold account. A. Well, what would that mean?

Q. A Swiss franc gold account. Aren't their accounts in your firm so designated? A. Well, I think we have in our firm for own gold specific book entries, Gold-Konto. That may be that the bookkeeper calls it this way, but it presupposes that somebody has a claim for gold, and I do not remember that I. G. Farben had gold deposited with us or a claim for gold. I do not remember such a thing.

Q. Well, now, you are talking of gold bullion, are you not?

8111 A. Or gold metal, of course.

Q. Yes, the solid metal. A. Yes.

Q. Well, I didn't mean that. I meant a currency account which is called a gold account. A. I do not remember such a one. I cannot make sense of it. Gold-Konto. It could be that in connection with some transaction such a Konto had existed, but I do not remember any detail. It may be that when I am refreshed I will remember it.

* * *

8116 By Mr. Schwartz:

Q. I hand you, Mr. Sturzenegger, Defendants' Exhibit 36-12504, being a photostat of the original and transla-

tion, and ask you to read it, please. I call your particular attention to the beginning of the second paragraph.

MR. SCHWARTZ: Mr. Wilson, I believe that you very well may have a copy of this, but I have an extra translation for you.

MR. WILSON: Thank you very much.

THE WITNESS: Have I to read the whole thing?

By MR. SCHWARTZ:

Q. Please read the whole thing, yes, so you can see the entire memorandum before I ask you even as to part of it. A. (After examining document) I haven't read everything, but I have gone through it.

8117 Q. You will note that it appears to be an unsigned copy of a memorandum dictated by v. Sz., dated February 2, 1940, and entitled "Memorandum on the Discussions with Mr. E. K. Halbach in Genoa and Milan from January 22 to 28, 1940," and that it has various subjects, the first, "U. S. A.," the second, "Shipments via Siberia," third, "Acna," and then "Export Business of the G. D. C.," and then "British India," and "Canada," and that is all.

I should like to read the translation of the first paragraph and the first two sentences of the second paragraph, and I will read them slowly so that your can be looking at the German if you like.

"USA.

"The shipments since the outbreak of the war or since the beginning of October 1939 after we had reached an arrangement with the G.D.C. about the mode of payment, all reached New York without difficulty. Only the customs authorities objected because in consequence of a cable from the G.D.C. we had not addressed the barrels as heretofore and had omitted the designation 'I. G. Farbenindustrie A.-G.'.

"At the request of ZEFI, we cabled for the f.o.b. and freight costs advanced by us for all shipments made until

December 4, 1939, inclusive, to be paid in Swiss francs to Greutert & Cie
8118 without mentioning our name. The G.D.C. made these payments promptly."

Mr. Sturzenegger, have you found that this translation is a reasonable working one? A. Yes, yes, I think it is right.

Q. Now, do you know a Mr. von Szilvinyi in I. G. Farben? A. Yes, Mr. Schwartz.

Q. His initials would be v. Sz., would they not? A. Well, I do not know these initials, but it is possible that that means von Szilvinyi. It would correspond to his name.

Q. And ZEFI is the abbreviation for Farben's central finance division; is that right? A. That is right.

Q. So this seems to be a memorandum by a man who could have been Mr. von Szilvinyi, on discussions with Mr. Halbach, shortly after the European war broke out, and he states that he cabled that shipments to him, which would mean Farben—I'm sorry—payments to him, which would mean Farben, were to be paid in Swiss francs to your firm, "without mentioning our name," which would be Farben's name.

Now, do you recall, Mr. Sturzenegger, that any payments came to your firm from G.D.C. for Farben without a mention
8119 of Farben's name? A. No, I do not recall such payments, but I think it is quite possible that such payments perhaps came in.

Q. And you say it is quite possible because G.D.C. was sending money to Farben? A. No, I think it is quite possible because, as stated yesterday, there were remittances amongst others without such mentioning of Farben's name.

Q. But over the years, both before the war and in the early months of this war, you know that G. D. C. did send moneys to Farben? A. Well, I am not sure that there were American payments came from G. D. C., but it looks rather

normal, and G. D C. was in close business contact with I. G. Farben.

Q. And you knew, didn't you, that G. D. C. imported Farben dyestuffs? A. I knew that.

Q. You know Mr. E. K. Halbach, do you not? A. Well, I have met him, I think, once, when I was here in the United States. It is about 15 years ago. I think that is the only occasion.

Q. But you know a good deal about him, naturally. A. Well, I know that he was a leading gentleman in this G. D. C.

8120 Q. G. D. C. is—A. General Dyestuff Corporation.

Q. And you know the General Dyestuff Corporation for many, many years and until the present has been the sales agency for General Aniline & Film? A. Well, I know it was for many years. I don't know if it is still to the present.

Q. I appreciate that amendment. And you know that they imported—as you say, you knew they imported Farben dyestuffs. A. Yes.

Q. As to these other subject matters, both geographical and topical, in this memorandum, Mr. Sturzenegger, Aena. the export business of G. D. C., British India, Canada, can you tell us what you knew of Farben's exports to those countries and through G. D. C. to other countries than the United States? A. No, I don't know anything.

Q. More specifically in the period between the outbreak of the European war and January 1940. A. No, no, don't know it.

Q. You don't know anything? A. No. Well, I know that G. D. C., as I told you already, was a great importer of Farben dyes, but what they did also, if they re-exported, or what they did else, it is not known to me.

8121 Mr. Wilson: The question was what you know about Farben's exports, not G. D. C.'s exports, wasn't it?

Mr. Schwartz: And through G. D. C.

The Witness: And through G. D. C., yes.

By Mr. Schwartz:

Q. The memorandum speaks of such exports of commodities. A. No, I don't remember.

Q. You don't know anything, for instance, of the customers outside the United States to whom G. D. C. exported commodities in this period? A. No.

Q. You don't know that they were in South America, for instance? A. Oh, I know that in South America there were many sales agencies or companies in business connection with I. G. Farben, but I do not know whether goods were delivered and sold via G. D. C. to such companies. I do not know.

Q. You never discussed, for instance, with Farben, its problems of supplying its sales agencies immediately after the outbreak of the European war? A. Not to my knowledge.

Q. What do you know about the firm of Fezandi & Sperrle, which is mentioned in the subject matter, "Export Business of G. D. C."?

8122 Mr. Wilson: Mr. Schwartz, before you go on, that last question, to which the witness answered, "No," reminds me of several telegrams from Ernest Schwartz in September of 1939. Do you remember that?

Mr. Schwartz: Which were introduced in February.

Mr. Wilson: Didn't that involve a discussion—

Mr. Schwartz: That involved re-exports of commodities.

Mr. Wilson: Do you remember those?

The Witness: Yes, I remember now that you showed me telegrams, Mr. Schwartz, but I do not remember that there were special names of sales companies, and a question about the south or north or something like that.

By Mr. Schwartz:

Q. You are perfectly right. Those telegrams mentioned only general problems about customs. But think back for a moment, Mr. Sturzenegger, to the companies mentioned as those whose stockholders were in a pool which was

managed by Mr. Auer. Do you remember those documents? A. Yes.

Q. On the pool shareholders and the South American companies? A. Yes.

Q. You mentioned earlier yesterday that Sociedade de Anilinas was similar to the name of many of those companies. A. It looked like that, yes.

8123 Q. Those Latin American sales agencies, do you know anything of their connections with Farben in terms of the receipt of dyestuffs immediately after the outbreak of the European war? A. No, no, Mr. Schwartz.

Q. You don't remember receiving remittances from such companies immediately after the outbreak of the European war? A. I remember quite well having received remittances from such companies, but I do not know now or remember if it was immediately in this period. There were many remittances, as I stated yesterday, from South America, which means from such companies, I think up to the end of '41 or so.

Q. And you mean from even before the war up to the end of '41? A. I think so. I am not sure about that, but I believe we have received remittances before.

Q. And it seems to be your recollection that they ceased about the time the United States entered the war? A. Yes, that is my recollection.

Q. Do you remember anything about remittances for Farben that came through you from British India? A. We had remittances, too, from the Far East. From, I think, among others, there may have been also from British India. I am not sure, but I have more clearly in

8124 mind remittances from Japan.

Q. Does the name of Chemdyes, a corporate name in British India, help you remember anything about remittances? A. Well, the name is known to me.

Q. As—? A. As supposed to be an organization which sold or imported, I think, I. G. Farben products, had business connections with them.

Q. You have had a more or less direct connection with stock owning in Chemdyes, have you not, through Mapro, I think. A. Well, that would be very indirect, wouldn't it?

Q. But you owned stock in a company which owned— A. We owned stock in a company who was connected, yes, in some way with this company.

Q. I think it was that that company you owned stock in owned stock in Chemdyes, didn't it? A. We owned stock in Mapro, and Mapro, I believe, once owned or had to do with Chemdyes.

Q. With Chemdyes? A. Chemdyes, yes.

Q. I would like to go back for a minute. I don't believe you answered my question about what you know about a firm called Fezandi & Sperrle, which is mentioned. A. I couldn't find it here.

8125 Q. It is in the section entitled "Export Business of G. D. C." A. I see, Fezandi & Sperrle. No, sir, that is not known to me.

Q. Not known at all? A. No, I do not recollect.

Q. Perhaps it refreshes you to read it over again and see what the discussion of Fezandi & Sperrle was. A. Yes (examining document).

I have read it, Mr. Schwartz, but it doesn't help me to remember anything at all.

Q. It doesn't help you? It says that G. D. C. used it for its South American and other export countries. A. Yes.

Q. And that the firm was originally connected with Ludwigshafen in some way. A. I didn't know that.

Q. Ludwigshafen is usually a way of referring to the Farben plant at Ludwigshafen, isn't it? A. Farben plant at Ludwigshafen, that's right.

Q. Am I not right that Farben has almost the only industrial plant in Ludwigshafen or that the entire city is devoted to Farben's manufacturing? A. I think that it is an important manufacturing center. I have never been there.

8126 Q. For Farben, you mean? A. For Farben.

Q. The subject matter entitled "Canada" men-

tions Consolidated Dyestuff Corporation and Axe Trading Company and also G. D. C. and Marietta Chemical Company.

Now, what can you tell us about the Consolidated Dyestuff Corporation in Canada? A. Well, I think nothing. The name is known to me, but I do not remember that we had to do with this firm. It may be that some stock of this company was hold by Axe Trading Company.

Q. I didn't get that. A. Hold by Axe Trading.

MR. WILSON: Held by Axe Trading Company.

THE WITNESS: Held by Axe Trading.

By MR. SCHWARTZ:

Q. That seems to be implied by the second sentence. The first sentence says that Consolidated Dyestuff Corporation was taken over by the Canadian Custodian. The second says that the Custodian wrote to Axe Trading with the request to prove its title to the ownership of the shares of Consolidated Dyestuff. A. Yes.

Q. You don't know anything, though, about Consolidated Dyestuff?

8127 A. No, nothing at all, just the name and what I told you in this connection. That came up in my mind.

Q. Do you think you had in your mind independently that it might have been owned by Axe Trading or that you read it here? A. Well, then, reading it, it came out, and I remember the name in some connection with Axe Trading Company.

Q. Didn't you own some stock, again, in a company which owned stock in Axe Trading? A. I believe that some stock of the Axe Trading was held by Mapro.

Q. And you held some stock in Mapro? A. Yes, we had some stock.

Q. What can you tell us about the Marietta Chemical Company? A. Is it in the same sentence?

Q. It is in the second paragraph of that subject matter on Canada. A. Well, where is it? I am sorry, I don't find it.

MR. WILSON: A little short paragraph in here (indicating).

THE WITNESS: No, the name doesn't say me anything.

By MR. SCHWARTZ:

Q. Did you know that Consolidated Dyestuff in Canada was an agency for the sale of Farben products?

8128 A. No, I didn't know that.

Q. And did you know that the Marietta Chemical Company was connected with General Aniline & Film and D. A. Schmitz and others associated with General Aniline & Film in the United States? A. No, not to my knowledge.

Q. Going back to British India for a moment, Mr. Sturzenegger, the second and third sentences refer to people named Mr. Richard Metz and Mr. Harry Metz. A. Yes.

Q. Do you know anything about those gentlemen? A. I remember one gentleman of the name Metz. I think it could be one of them. I knew another gentleman known as General Metz.

Q. What was he? A. Well, I do not know his exact functions, but he was in some way connected, I think, for Ansco or I. G. Chemical, I don't know, in former years.

Q. Ansco or—? A. I. G. Chemical Corporation.

Q. You mean AIG, the former name of General Aniline & Film? A. Yes, yes, I think so.

Q. Was he not also a high official in I. G. Farben in Germany?

8129 A. I don't think so.

Q. Did you know his two sons or did you know that he had sons named Richard and Harry? A. I didn't know it then, but afterwards once I made acquaintance with one of the gentlemen of the name of Metz and I think he was presented to me as a son of the older General Metz.

MR. WILSON: Are these men sons of General Metz?

MR. SCHWARTZ: Yes.

THE WITNESS: Yes. I don't know if it is Richard. I don't know his Christian name.

By MR. SCHWARTZ:

Q. You don't know which of the younger Metzes you met, whether he was Richard or Harry? A. Yes, one young gentleman named Metz.

Q. Do you know that a Richard and a Harry Metz were both connected with I. G. Farben? A. I couldn't say it this way. This gentleman whom I met, be it Richard or the other one, I met once in Berlin.

Q. As a person associated with Farben? A. I think he was more associated with the American business, but visited Germany and stayed there with I. G. Farben. I don't know what his exact functions were.

Q. Did you ever have any personal or business contacts with this younger Mr. Metz?

8130 A. Well, I may have seen him later on, once or twice, in Switzerland, when traveling back to New York or the Far East, but I had only a very superficial connection with him. I have met him once or twice in Berlin and then, as I told you, I believe in Switzerland.

Q. You mentioned in connection with traveling to New York or the Far East. A. Yes.

Q. Can you elaborate on that, why you thought of him in connection with New York and the Far East? A. Well, I knew that he came originally from New York or at least from the United States, where his father had had his position, and that he, I believe, wanted to go back there.

Q. And what brought the Far East into your mind in connection with the younger Mr. Metz? A. I believe to remember that he had once traveled there to the Far East, maybe for I. G. Farben. I don't know for what special purposes, but I think so.

Q. Did you know that he was an agent for I. G. Farben in connection with Farben's British Indian sales company? A. No, didn't know that.

Q. Or that he was an agent in New York for I. G. Farben in connection with Farben's business there? A. No, no.

Q. Or that he was an agent in England?

8131 A. No.

Q. Or in Holland? A. No.

Q. I am glad to have noted throughout our discussion, Mr. Sturzenegger, that you were able to work from the translation. That will save us a lot of time. You were able to follow the translation? A. Well, sometimes, of course, I may make this reservation, that I must compare. It is a little bit difficult, but in general I should be able to.

MR. SCHWARTZ: And, Mr. Wilson, for the record, for the duration I will not bother, with your permission, to say I offer these exhibits and attach them to the deposition, and we will assume that I intend to offer and I do offer each of those that I marked.

MR. WILSON: Sure.

MR. SCHWARTZ: Those for yesterday and for the future.

MR. WILSON: I agree to that.

MR. SCHWARTZ: Thank you.

By MR. SCHWARTZ:

Q. I hand you exhibit 37-12305. It is a photostat of a telegram in English. A. I see (After examining document:) I have read it.

Q. Pass that to Mr. Wilson, please.

8132 A. All right (handing document to Mr. Wilson).

Q. Mr. Sturzenegger, that appears to be a photostat of a telegram from Anilinfabrik, which is a cable word for I. G. Farben, is it not? A. Well, I am not even sure if it is for the whole I. G. Farben, but—

Q. It is for part? A. It may be a branch or part.

Q. It may be a branch, but you understand it to be either a branch or the whole I. G. Farben? A. Yes, one or the other.

Q. And it is addressed to Standevel. Do you know that cable address? A. No.

Q. Well, I think that means Standard Development Corporation. A. I think so, yes.

Q. But it is not terribly important. And it is dated January 4, 1940, and reads, in English:

"Re USAC shares we hereby assign to you whatever title we have to the one hundred seventy USAC shares now registered in name of SIG against a total payment of one hundred dollars. Please make payment to Greutert Cie Basel in favor of Deutsche Laenderbank, Berlin."

8133 It is signed Anilinfabrik.

Now, as to USAC, do you know that abbreviation? A. It doesn't come up in my mind.

Q. Well, I think it means United States Atlantic Company, which was one of the companies connected with Standard Oil and I. G. Farben. A. I see.

Q. In the oil hydrogenation business. A. Yes.

Q. Do you know the abbreviation SIG? A. No, I don't.

Q. Well, it does not mean I. G. Chemie or I. G. Farben, I am pretty sure. A. No, I don't think so.

Q. It refers to another corporation of the Standard Oil-Farben oil affairs business. So, assuming those cable addresses are what I think they are, Mr. Sturzenegger, this appears to be an assignment by I. G. Farben to Standard Development Corporation about January 4, 1940, of shares in USAC, which were registered in the name of SIG, against a payment to be made to you in favor of Laenderbank; is that right? A. Yes.

Q. Now, exhibit 36, as we saw, appeared to be a request by Farben that payment be made to Farben through you

8134 without mentioning Farben's name. Do you recall that? I see you are looking at it. A. Do you refer to this exhibit (indicating)?

Q. The second paragraph of exhibit 36. A. Yes, but there, if I am not wrong, is only the question about specific freight advance payments.

Q. That's right, it was a request for payment of a specific sum to you without mentioning Farben's name. A. Yes.

Q. This one, exhibit 37, appears to be a request for a payment to Farben through you in favor of Laenderbank. A. Yes.

Q. Do those two illustrations conform to your recollection that some remittances to Farben came through you without mentioning any name, and some mentioning the name of Laenderbank? A. It seems to correspond to what I have stated, according to my recollection yesterday.

Q. Have you any idea why there should have been a difference in the request to mention names as between the payments to come from G. D. C. in connection with the subject matter of exhibit 36 and the payment to come from Standard Development Corporation, a Standard Oil company, in connection with this sale of shares? A. No idea, no idea.

8135 Q. Did you know the reason why some senders of money to Farben were asked not to mention any name and some were asked to mention Laenderbank? A. No.

Q. You never discussed that with Farben? A. No.

Q. You never drew any conclusions such as those you mentioned bankers might draw from the stream of remittances? A. Well, it is difficult to say whether I drew at such and such a time a special conclusion, but now, considering the facts, I came to the conclusions I told you yesterday.

Q. I don't think you told us yesterday why some remittances mentioned no name, some mentioned Laenderbank, and some said, "For Farben." A. You mean the difference in this treatment?

Q. Yes. A. I thought you were speaking just of a possible explanation for remittances in such or similar way.

Q. Oh, not Farben's reasons for having its name not mentioned, no, we discussed that yesterday. I am interested in the reason why some mentioned no name, some mentioned Laenderbank, and some, as I think you recol-

lected, mentioned Farben. A. I do not know the reason. They must have interior

8136 reasons which were not known to me.

Q. And I call to your particular attention that both of these things are dated within a month and two days. A. Yes.

Q. You probably know that. Well, did you ever draw any conclusions as to why some remittances were different from others in terms of mentioning names, based on your receipt of a whole stream? A. A whole stream is perhaps exaggerated, but I would say many remittances, no doubt.

Q. Did you ever draw any conclusions on the basis of receiving these many remittances as to why some mentioned no name, some Laenderbank, and some Farben? A. No, I do not remember that I drew special conclusions in this respect.

Q. I mean your own conclusions. A. Yes.

Q. I hand you exhibit 38-18719, which is a translation, a photostatic two-page letter, another translation, and another letter. I believe you will find that one is an enclosure to the other.

MR. SCHWARTZ: I have a copy here that you may have, Mr. Wilson.

MR. WILSON: Thank you.

MR. SCHWARTZ: I should like to ask you, Mr.

8137 Wilson,

if these copies that we give you can be returned to us after your convenience is served, because I am pretty sure you already have copies, and oftentimes they will be our only additional copy other than the one marked.

MR. WILSON: Yes. I do think this, though, that sometimes we don't have a photostat of a translation. That occurred in one of the two papers yesterday, and I will probably want to work out some arrangement with you whereby eventually I shall have copies.

MR. SCHWARTZ: Certainly.

MR. WILSON: Copies of anything which I don't already have.

MR. SCHWARTZ: I suggest that in making such copies or asking us to make them, we work on the exhibit rather than the duplicate copy which I may offer you.

THE WITNESS: I have read this, Mr. Schwartz.

By MR. SCHWARTZ:

Q. You will note that the two-page German letter, dated May 5, 1942, from Farben's Central Finance Administration, marked "Secret," to the Oberfinanzpraesident of the Devisenstelle in Berlin, and signed "Heil Hitler, I. G. Farbenindustrie Aktiengesellschaft, Gierlichs, Henze," mentions remittances from Sturzenegger to Farben of January 1942, December 1941, and February 1942, involving approximately 325,000 Swiss francs. Do you follow me on that?

8138 Do you note that? A. Yes.

Q. You will note also that the subject matter of the letter seems to be payments Farben had made to Italian insurance companies and particularly to the Assicurazioni Generali, Trieste, and refunds or remittances received back by Farben from such Italian insurance companies. Have you noted that? A. It looks like that, yes.

Q. Do you know anything of the business Farben did with Italian insurance companies between December '41 and early '42? A. No, not insurance. I have no recollection about such a thing.

Q. Do you know of shipping that Farben did in that period on which it may have or did secure insurance from Italian insurance companies? A. No, I don't remember such a thing.

Q. For instance, just to help you remember, if you can, did any moneys paid by Farben to those companies go through you? A. No, I do not remember such payments, Mr. Schwartz.

Q. Do you remember receiving remittances from Italian

insurance companies for Farben? A. I don't remember such remittances, but it looks as
8139 if we had received them.

Q. Do you remember receiving remittances for Laenderbank which were in fact for Farben? A. I do neither.

Q. Beg pardon? A. I do neither.

MR. WILSON: You mean in relation to Italian insurance companies?

MR. SCHWARTZ: Yes, yes.

THE WITNESS: Of course, I remember having received many remittances for Laenderbank and I. G. Farben, but I do not remember special remittances from these Italian insurance companies.

By MR. SCHWARTZ:

Q. Did you ever discuss with Farben or do anything for Farben with respect to insurance payments on shipments of dyestuffs? A. Not to my knowledge.

Q. When you received a remittance for I. G. Farben, however it was designated, you just credited either the Farben account or the Laenderbank account in your firm; is that right? A. Yes, that would be the normal way.

Q. You didn't customarily immediately turn around and send it on to I. G. Farben through another bank?
8140 A. I don't think so, if not especially requested.

Q. That would have been the exception? If we had special instruction, then we would handle it this way. The normal way would be to credit the incoming amounts to I. G. Farben or Laenderbank as requested.

Q. But if requested or if you were making a payment to I. G. Farben other than passing on a remittance, you, of course, had some mechanics whereby you could send the money to I. G. Farben's account in another bank. A. Well, there is no special mechanics necessary. The normal way would be: I. G. Farben requested us to transfer such and such amount to another Swiss bank for their account,

and then our function as banker would be ended. That is the normal way as it was.

Q. That would be almost the simplest type of withdrawal by your depositor? A. Yes.

Q. And you might describe that as executing an order for the transfer of money? A. Yes.

Q. Did you do that often for I. G. Farben? A. Yes.

Q. And you mention that you used Swiss banks. I assume that you also delivered money for Farben's account in other

8141 banks, other than Swiss. A. They were mostly Swiss.

Q. But they were also American banks? A. Well, there could only be the case of that before Pearl Harbor.

Q. Of course, of course. But before Pearl Harbor you frequently, I think, transferred money at Farben's request to Farben's account. A. We made transfers too. I do not recall.

Q. And in other countries as well? A. Yes, it may be.

Q. Now, what countries do you remember transferring money to for Farben's account during the war—and here we will make the war mean from Pearl Harbor to the end of the war. A. From Pearl Harbor to the end of the war?

Q. So as to exclude transfers to New York or any of the allied countries. A. Well, I am trying to strain my memory, but I do not recall special remittances of such kinds. No doubt by far the greatest part of remittances was made within Switzerland.

Q. You mean to another Swiss bank for Farben? A. Yes, to another Swiss bank.

Q. Well, suppose you mentally go through the

8142 geography

and start thinking of all the countries where it might have been possible. That would mean all the neutral countries, the Scandinavian countries. A. Yes.

Q. Turkey, Spain, Portugal. A. Well, I remember this one case, this single case, that came up during the last depositions, a payment destined to Spain, was it, or Portugal,

with all the complications there. That is a case of a remittance outside the country.

Q. Do you remember any to other countries, to Sweden? A. I do not recall a special payment there. I do not exclude the possibility of such payments.

Q. When you transferred money for Farben to another country, or even to Switzerland, during the war, was it done mentioning Farben's name or not mentioning Farben's name? A. I do not think there was a general rule. I think that depended on the special instructions we had in such a case.

Q. It might have been instructions from Farben to you to transfer money to Switzerland or Sweden without mentioning Farben's name? A. Yes, it might be.

Q. Do you remember any such instances without mentioning Farben's name? A. No, I asked myself whether this case of Portugal

8143 or Spain was of such a character. I do not remember now.

Q. Aside from that one? A. Aside from that?

Q. Yes. A. No, I do not recall special cases, but there might have been.

MR. WILSON: Do you want to take a five-minute recess?

MR. SCHWARTZ: All right.

(Whereupon a short recess was taken.)

8144 By MR. SCHWARTZ:

Q. Mr. Sturzenegger, I hand you Defendants' Exhibits 39, 40 and 41 concerning a transfer of $2,261,176.30 from your account in the National City Bank to the Skandinaviska Bank, Stockholm, Sweden, about July 1940, in which I believe you will confirm that it appears the transfer was without mentioning your name.

MR. WILSON: For the record, Mr. Schwartz, you didn't identify your own numbers on those. I don't know whether you care to or not.

MR. SCHWARTZ: Yes. Will the reporter note after 39, 40 and 41 the subsidiary full number.

(The witness examined the documents referred to.)

MR. WILSON: May I see them if you are finished looking at them?

(Mr. Wilson examined the documents referred to.)

By MR. SCHWARTZ:

Q. It may help you to place these exhibits in their proper context, Mr. Sturzenegger, if I tell you that two of them, and the first two, were exhibits to the memorandum of the Swiss Compensation Office of November 1947. A. Yes.

Q. And let me read you the portion of the memorandum or tell you of it. It is the portion with respect to the cancellation of the dividend guarantee between I. G.
8145 Farben
and I. G. Chemie. A. Yes.

Q. On page 31 of the original, and particularly with respect to the transfer of the Swiss francs 10 million which had to be remitted in dollars from Chemie to Farben, it states:

"On July 22, 1940 Sturzenegger & Cie. had the amount of $2,261,176.30 remitted through the National City Bank of New York to the Skandinaviska Banken Aktienbolag, Stockholm, for the account of I. G. Farben." A. Yes.

Q. I am sure you remember that transaction. A. Yes, I remember that now you mention it. I remember it.

Q. And I am sure particularly that you remember it all the more in view of the fact that Exhibit 41-13665 is a letter from your firm to the National City Bank. A. Yes.

Q. Will you tell us, Mr. Sturzenegger, why neither Farben's name was mentioned nor your name mentioned in this transfer of funds between Chemie and Farben through you? A. Well, that I do not know. I think that the instructions were accordingly. As I recall the matter, there was the

stipulation between I. G. Chemie and I. G. Farben in connection with the cancellation of the contract stating
8146 that I. G. Chemie had to pay, among others, I think, ten million francs or counter-value of that, to I. G. Farben. And it was, of course, up to I. G. Farben to give detailed instructions as to how this amount was to be paid. And I think they instructed Basle to make the payment not in Swiss francs but in dollars, in dollar payments, which naturally were made through American banks. Like this: "Please remit account value in dollars of the stipulated Swiss franc amount to such and such bank in New York for account of Skandinaviska Banken." And I think the instruction must have been too: "Do not mention our or your name." That's guessing now; but it is a conclusion from the manner how the payment was effected.

Q. You played a very prominent part in that concellation of the dividend guarantee agreement, did you not? A. Do you mean myself? My firm?

Q. Yourself. A. No, that would be exaggerating facts. I took part in some of the negotiations, and I occupied myself much with the matter no doubt.

Q. And you were, of course, both I. G. Chemie's banker and I. G. Farben's banker? A. In this case, yes.

Q. And in other cases? A. Many other cases too.

8147 Q. In that negotiation did you play a part for I. G. Chemie or for Farben or both? A. I should say both.

Q. And in transmitting the money that Chemie was by agreement to pay Farben, what part were you playing specifically there? A. With reference to I. G. Chemie?

Q. With reference to Chemie and Farben. Were you transmitting this money as Chemie's representative or Farben's representative? A. Well, of course, by order of I. G. Chemie.

Q. I beg your pardon? A. As the payment was to be made from I. G. Chemie, we paid the amount by order of I. G. Chemie. And the party for which the contracted payment

was destined was I. G. Farben, but the banker had to carry through this technical transaction, money transaction.

Q. Then you were acting for Chemie in sending the money? A. Yes.

Q. You weren't receiving the money for Farben in your capacity as Farben's banker? A. Well, it's more or less a question of law. I cannot possibly fix it without having studied the matter legally. I can only say it's a rather normal way in which a banker

8148 carried through such an order.

MR. WILSON: Mr. Schwartz, when you began this interrogation a few minutes ago, the question began with: "In the negotiation" did you play a part for one or the other? Now we are speaking about this particular remittance.

MR. SCHWARTZ: That's right, sir.

MR. WILSON: I'm not sure whether the witness understands the difference.

MR. SCHWARTZ: I tried to make it clear, and now it is more clear.

THE WITNESS: Yes.

By MR. SCHWARTZ:

Q. We have passed the negotiations. A. Yes.

Q. And we are on the transmission of this money. A. Yes.

Q. And I think you just said that in transmitting the money you were acting for Chemie? A. Yes, I should say so.

Q. Then do you remember that Chemie instructed you to transmit this money? A. Sure.

Q. I beg your pardon? A. Sure. I remember the contract where the stipulation was clear that I. G. Chemie had to pay such an amount

8149 of money.

Q. But that's not quite my question. Do you remember that Chemie instructed you to send this money on behalf of Chemie? A. I do not understand your specific

question. It was a money payment order to be executed, yes, by request of I. G. Chemie.

Q. And not a money payment to be received by request of Farben? A. Well, I. G. Farben had only to give the detailed instruction how they would like to receive the money that was due to them.

Q. So did you then receive instructions from both Chemie and Farben? A. Yes.

Q. And Chemie instructed you to pay to Farben? A. Yes.

Q. And Farben instructed you to pay over to Farben in a certain manner? A. Yes, that would be, I think, right.

Q. So then the manner of the payment through the Skandinaviska Bank without mentioning anybody's name was told to you by Farben and not by Chemie? A. Yes.

Q. Were you also instructed by Farben not to mention

8150 your own name? A. I think so. I do not remember that, but it's probable.

Q. Were you often given instructions in making payments to Farben not to mention Farben's name and not to mention your name? A. I cannot say how many times, but there were instructions.

Q. Were they usually limited to cases where the payment was made to Farben through another neutral country? A. No. I couldn't make such a distinction. I think I told you yesterday, Mr. Schwartz, that in the banking business it is an often-used manner of making payments that upon special request of an interested party the name of the sender or the receiver is not disclosed for business secrecy or other reasons. That was done before the war also.

Q. This cancellation of the agreement between Chemie and Farben and the payment of ten million Swiss francs to Farben was rather a public, open matter, was it not? A. As to the cancellation, yes, sure.

Q. And not as to the payment of ten million Swiss francs? A. As to the amount, yes.

Q. But not, apparently, as to the method by which the

8151 amount was to be paid? A. No, of course that wouldn't interest anybody.

Q. Can you tell us why Farben should have wanted to instruct you to pay this money to Farben without mentioning your name or Farben's name? A. No, I do not know the reasons.

Q. From your knowledge as Farben's banker in this period, can you speculate or draw a conclusion? A. Well, I could speculate that perhaps that Farben didn't like the New York bank to know that the money was a money amount due to I. G. Farben but that's speculation. I do not know the reason why they instructed so.

Q. Can you speculate as to why they should not have wanted the Swedish bank to know who was the sender? A. No, I cannot.

Q. Can't speculate on that? A. Can't draw a conclusion.

Q. Now, you said that you received this money from Chemie. Presumably Chemie gave you a draft on its own account with you? A. I do not remember how it was made. May be that I. G. Chemie had already a greater amount deposited with us as Chemie's banker and that this amount was to be filled up to such an amount to enable us to make this payment or if I. G. Chemie remitted us from other Swiss banks, which is also

8152 possible, the sum. I do not remember these details.

Q. But when you received that money for Chemie you could, of course, have credited it to Farben's account with you? A. Yes.

Q. But apparently instead Farben wanted the money in dollars through Sweden? A. Apparently.

Q. Have you any idea why it wanted the dollars in Sweden instead of say New York? A. No, I do not know.

* * *

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(Pages 1042 to 1561)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 348

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC., PETITIONER,

vs.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 6, 1957

CERTIORARI GRANTED OCTOBER 14, 1957

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12140

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. ETC. (I.G. CHEMIE), *Appellant*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES, *Appellees*

Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

Volume III

(Pages 1042 to 1561)

8158 Q. I see. Well. Where would it appear on your books who is the Mr. X that you refer to in your securities book by a number? A. Well, in such a case where the depots, deposit accounts, are marked only by a number, there is of course a list in the department where it can be seen this number corresponds to this client or this to the other client.

Q. I see. Do you remember whether Farben kept its securities with you under a number instead of its own name? A. No, I do not remember that.

Q. Do you remember whether all the Farben accounts

8159 with you were customarily on your books referred to as Farben accounts or a numbered account? A. May I ask you again?

Q. Do you remember whether all the accounts with you that Farben had were referred to on your books by the name of Farben or by a number which meant Farben? A. To my recollection Farben's name.

Q. From whom was it intended that it be kept a secret by this use of a number instead of a name? A. You mean the other clients? Examples I gave you?

Q. Yes. In the case where you referred to a client by number instead of a name, from whom was that intended to be secret? A. From whom?

Q. To whom? A. To whom?

Q. Yes. What was the function of the numbers? A. Oh, there are perhaps fiscal reasons or something like that. If a man has a deposit with a bank and he is anxious, he thinks perhaps if it is under a number, well, then the staff doesn't see to whom it belongs, and he doesn't run fiscal risks in case he hasn't declared fully his fortune. That may be one reason.

Q. Well, your firm was a very small one and you had no more than two or three employees—

8160 A. That is a little bit underdone.

Q. I meant two or three employees who had access

to the books. Am I wrong on that? A. Well, but do not forget we are a member of the Swiss Bankers Association. We are listed as a private bank. We have under our Swiss laws to undergo every year a very thorough examination by a public accountant. And the banking secrecy is in our country not always strong enough against our own authorities. If a tax authority comes, well, you may be forced to disclose a number or so. And then it may be the wish of a client just to be protected against it though it is of no use practically.

Q. I see. So any accounts by number on your books are known to the Swiss authorities or not known? A. I couldn't say that, because in normal cases when nothing comes up it is not up to a banker to make tax declarations. It's only in a case of a lawsuit or something like that, special difficulties.

Q. Would you say that each year the Swiss authorities examine your books? A. Not the tax authorities.

Q. Not the tax authorities? A. Not from this point of view.

Q. Well, what authorities examine your books each year?

8161 A. Well, that is not an authority but that is a public accountant firm has to do it every year.

Q. Auditor? A. Yes, auditor. Yes.

Q. The government officers do not examine your books? A. No.

Q. I see. A. But the government has made the prescription that a certain restricted number of first-class auditors are available, one of which may be chosen by the bank for the yearly supervision and examination.

Q. And you do that regularly each year? A. Yes.

Q. And he writes a report? A. Yes.

Q. Well, for whom is that report? A. This report is for the bank, for the manager of the bank.

Q. I see. Not for the government? A. No.

Q. And certainly not for the public? A. No.

Q. I see. So even though you are a small private bank with only two or three owners or partners, you get a regular examination by such an auditor each year?

8162 A. Yes.

Q. Does that auditor see this list you mentioned which translates numbers into names? A. Well, I do not

assist to the carrying through of the examination so I really couldn't say whether he sees it. But he must of course—well, he must examine everything that ought to be here according to the books, ought to be in custody for customers, is in effect here. He has to examine that. I think so.

Q. Well, certainly he has to see whether the securities you state—A. are really—

Q. —are really there. A. Yes.

Q. But does he see the list which contains the names behind the numbers? A. Well, I couldn't say that for the moment.

Q. Well, that you said was the thing the client wanted to keep secret. A. Yes.

Q. Surely you know whether you tell the auditor or not. A. Well, I told you already I do not assist to the practical carrying through of this examination. I do not know whether this gentleman who makes the examination is

8163 asking for that.

Q. But you are the managing partner? A. Yes.

Q. And the single individual who directs the firm? A. Yes.

Q. And you don't know whether the auditor is shown this list of numbers and names? A. No, I do not.

Q. Do you think one of your subordinates could show him that list without inquiring from you first? A. Well, I think if this auditor firm would request it, one of my staff would have to show it. The man who is in charge of it.

Q. Would he have to ask your permission? A. Well, I should say it would be the right thing to do, but I am not sure. I have not—

Q. Do you remember ever being asked by one of your subordinates— A. No.

Q. —whether he could show the auditor such a list? A. No, I do not remember such an occasion.

Q. Where is this list kept physically? A. This list is kept with the securities bookkeeping department.

Q. Is it specially locked up?

8164 A. I think so.

Q. I suppose fewer people have the key than have access to the books? A. Yes.

Q. Your secretary or typist can look at the book but she cannot look at the list? Is that right? A. Yes, I should say so.

Q. How many people including you have access to the list? A. Well, I should say two at least.

Q. Who are they? A. They would be Mr. Sutter, who is the head of the securities safekeeping department, and I would say Mr. Werder, who is the chief bookkeeper of the firm.

* * *

8187 Q. Yes. Well, can you give us, as you think of them, names of your customers during the war? I can help you with some of them. Applications, as you may know, have been filed with the Office of Alien Property for the release of assets of some of your customers, and they are Professor Kurt H. Meyer, Geneva, Switzerland; Irene Keller, Windisch, Switzerland; Theodor Keller and Son, Ambrosius M. Keller, Windisch, Switzerland; Mrs. Anni Reiner; Hans Kreis, Neuhausen, Switzerland; Fondation de famille Raffael Chur, Switzerland; August Germann, Zurich, Switzerland; John R. Moz, Rurigliana, Switzerland; Wally du Bois, Peuseux, Switzerland; Louise du Bois, Peuseux, Switzerland; Viktor Germann, Schaffhausen, Switzerland; Mrs. Madeleine Mollwo, Prilly, Switzerland; Mrs. Doris Schnitzler, Zurich, Switzerland; and, of course, yourself. A. May I see that?

Q. Please look at that list.

8188 A. Yes.

Q. Can you give us the names of more of your customers during the war? A. Well, for instance, Mr. Wolfensperger.

Q. Go on, please. Don't let me stop you. A. Well, I. G. Chemie is also a customer, isn't it? And Osmon is also a customer, and Industriebank is also a customer, and Sopa-

dep has also been a customer. There are, too, individuals, of course, in Switzerland, and there are—

Q. You said two individuals? A. No, no, there are, in addition, of course, individuals in Switzerland. There are, in addition, several firms besides the I. G. Farben which were in Germany, the old connections, from the former time, which I think are several.

* * *

8206 Q. Did you hold securities for people in I. G. Farben personally, people like Hermann Schmitz? A. Yes, to my knowledge.

Q. What do you mean by "to my knowledge"? You mean you definitely remember? A. Yes. I do not know whether it is still the case and I wanted—is it during the war always if you don't mention especially it is during the war?

Q. Yes. A. Yes.

Q. Then you held some property for Hermann Schmitz during the war? A. Yes.

Q. For others, for other individuals who were
8207 connected with I. G. Farben, perhaps, too? A. I think so.

Q. What others? A. I remember Bosch, for instance.

Q. Which Mr. Bosch? A. Well, he died, I think, at the beginning of the war.

Q. Others, perhaps? A. Maybe Frank Fahle.

Q. What was Mr. Frank Fahle in Farben? A. A director.

Q. And, of course, Mr. Schmitz and Mr. Bosch were also directors? A. They were leading men.

Q. Pardon? A. Leading men.

Q. They were even superior to Mr. Frank Fahle? A. Yes.

Q. Others? A. Well, I do not remember just now others.

Q. For other German individuals aside from people in I. G. Farben? A. That may be the case.

Q. Can you tell us some of their names? A. I do not remember them.

8208 Q. People connected with Metallgesellschaft? A. I do not think they had deposits. I am not sure, though.

Q. People connected with these other German corporations you mentioned were your customers? A. I do not remember a case where securities were deposited.

Q. Did you have money accounts for these German individuals, these Farben people and such non-Farben people as you might have had? A. Well, I think the same, had at the same time money accounts, which is natural if they had deposit accounts. Then the interest or the dividends are normally credited to the corresponding account.

Q. Is it also customary in your firm that when a customer has a securities account they almost invariably have a money account containing other than the dividends on securities?

A. I didn't understand this question.

MR. SCHWARTZ: Will you read it, please?

(The pending question was read by the Reporter.)

THE WITNESS: Well, I couldn't say whether it is customary or not. It depends on the singular case.

By MR. SCHWARTZ:

Q. Well, do you think, as you recall your customers,
8209 that whenever they have a securities account they almost always have a money account? A. Normally it is combined. It is the normal way.

Q. Can you tell us the names of any of your German individual customers other than people in I. G. Farben? A. Other than customers?

Q. Other individual customers, German individuals, other than people in I. G. Farben. A. Yes, for instance, Mr. Pfeiffer.

Q. Mr. Pfeiffer? A. Yes.

Q. Who was he? A. He was director of the Laenderbank.

Q. I see. Who else? A. Well, formerly a client was also a Mr. Ilgner.

Q. Who was he? A. He was a director of I. G. Farben.

Q. I meant people other than individuals associated with

I. G. Farben. A. I cannot remember singular cases, but I am sure there are.

Q. Can you remember even one? A. Well, they don't come up just now in my mind.

Q. Would you describe Mr. Pfeiffer as a person associated with I. G. Farben?

8210 A. No, I wouldn't describe him so.

Q. Because you felt that Laenderbank was not associated with I. G. Farben? A. No, no, that's right. They did a lot of banking business but not associated or dependent on I. G. Farben.

Q. As early as the 1920's, in exhibits that we have presented in the depositions, we saw that Mr. Greutert, your predecessor, had described Deutsche Laenderbank as the house bank for I. G. Farben. Would you agree with that description for the period during the war? A. No, I don't think—I think it is just some kind of a surname, and it is an exaggeration in so far as it seems to indicate as if Laenderbank was only active for I. G. Farben, which was not the case. They did a lot of business for I. G. Farben that is true, and beyond that.

Q. Their quarters were physically together with those of Zefi, Farben's Central Finance, weren't they? A. That is right.

Q. Is there any other bank in Germany that you would describe as Farben's house bank? A. No.

Q. Would you describe your own firm as Farben's house bank? A. No, certainly not, certainly not.

Q. Would you describe your own firm as Farben's

8211 house bank in Switzerland? A. No, neither.

8225 Q. Mr. Sturzenegger, in discussing the remittances you received for Farben during the war, I asked you about the possible total, and I think you said there must have been millions. A. The total? Yes, I said so.

Q. Now, all this money either went into Farben's account

with you or you sent it on elsewhere at Farben's instructions? A. Yes.

Q. But throughout the war Farben had a balance with you? A. Yes.

Q. Can you give us any idea of the amount of that balance? A. That differed enormously, so it's quite impossible to give you an approximate estimation. There may have been hundreds of thousands. Another day there may have been several millions. Go down the next day, the next week, as dispositions were made.

Q. Have you any idea of the total range of fluctuation? Did it ever hit a hundred millions? A. No, never, according to my recollection.

Q. Do you think it ever hit fifty millions? A. Fifteen or fifty?

Q. Fifty.

8226 A. No, not to my recollection.

Q. Twenty-five? A. Well, it's pure guessing, but I should say much less.

Q. Than twenty-five? A. Yes. If I understand you right. Excuse me. We are not speaking of the total amount of all the sums during the war that were made as remittances, but we are speaking of the estimated balances.

Q. Exactly.

MR. WILSON: Maximum daily balance?

MR. SCHWARTZ: Exactly. We understand each other very well.

By MR. SCHWARTZ:

Q. You think, then, the balance was substantially less than twenty-five? A. Yes, I think so.

Q. Did it remain level during the war period or rise or decline generally speaking? A. I believe declined.

Q. Have you any idea what it was at the time of the outbreak of the European war? A. No, I have no idea.

Q. Well, if you think it was substantially less than twenty-five, it was certainly less than twenty-five then, and

8227 you also think it declined during the war? Is that right? A. Yes, I think so.

Q. Now, I may not understand how many balances or accounts Farben had with you. Did it have more than one? A. I believe it had more than one.

Q. Were they just different accounts or different currencies or what? A. Both.

Q. Both? A. Different accounts, and maybe different currencies.

Q. Well, can you run over the accounts for us? A. Well, there was just a normal current account in Swiss francs. And there was, if I'm not mistaken, a so-called Bereitschaftskonto, I think also in Swiss francs. I think that was all. And only temporary there may have been balances in foreign currencies, when, for example, a remittance in dollars or other foreign currency came in and was not converted into Swiss francs, though in such a case it was probably credited to I. G. Farben in the original incoming currency, say dollar, for example, or whatever it was.

Q. Now, in such cases, you would have the money in a bank of the country of that currency? A. Normally, yes, as all banks do it.

Q. That is, you might have some dollars in a New York bank for Farben and so you would have a separate account on

8228 your books which would be a dollar account for Farben? Is that it? A. Well, for I. G. Farben we had then at such a moment a dollar account. But our corresponding balances in the corresponding foreign currency were not separated. They were mixed with possible other balances we had with foreign banks.

Q. So you might have $10,000 in New York, but you would have an account with Farben for $1,000? A. Exactly.

Q. And the $1,000 would be part of your money in New York? A. Exactly.

Q. But as to each currency it would be a separate account with Farben? A. I think so.

Q. That is, if Farben had dollars and pounds— A. Yes.

Q. —and lira, you would have three accounts? A. Yes. We would have credited them in this currency, if not upon the request of I. G. Farben converted it into Swiss francs.

Q. Well, in how many currencies during the war do you think you had accounts for Farben? A. Well, I don't know, but as the chief currencies were Swiss francs, dollars, lira, pounds—well, I think

8229 Reichsmarks—there is the bulk of it. May be there was just, for an instant or short moment, other currencies, but I don't think there were great amounts.

Q. You mean you could convert Swiss francs into other currencies very readily so it may not have been necessary to keep accounts in other currencies? A. Yes.

Q. But you did nevertheless keep accounts in other currencies and you think they were dollars, pounds, lira and Reichsmarks? A. Yes. I'm not sure in my recollection whether these accounts in foreign currency were kept longer. I believe they were mostly converted shortly after receipt into Swiss francs.

Q. They were generally for the purpose of a specific transaction? A. No, not to my knowledge.

Q. If, for instance, Farben asked you to put lira to its credit in another bank, you would do that and open a special account? A. Well, I'm not sure if I understand you correctly.

Q. Well, let us take a case similar to the one we discussed in your earlier testimony. Say you were transferring escudos to another bank for Farben. A. Yes.

8230 Q. You would open an account, an escudo account, for I. G. Farben, would you not? A. Well, if we transferred it for I. G. Farben to such a bank, then we would no longer have an account with I. G. Farben. It was a remittance from us to I. G. Farben. It was gone.

Perhaps, to make it clear, if we received, say through the Union Bank of Switzerland, a remittance for I. G. Farben in the amount of $10,000, then we would normally credit

I. G. Farben on dollar account with $10,000 and wait until they gave further instructions. May be they had given instructions before to convert an incoming amount of such a value into Swiss francs. Then it was in such a case—it wouldn't have been necessary to credit I. G. Farben with the original currency, but we would have credited then the account with the counter-value in Swiss francs, just to try to give you a picture how the thing technically was handled.

Q. But Farben had obligations and business in many countries of the world, did it not? A. Well, I suppose so.

Q. And in these countries it had occasion to pay out money? A. To pay out money?

Q. From time to time? A. Yes, may be the case.

8231 Q. And when it paid out money say in Swedish krona—A. Yes.

Q.—you might be asked to open a Swedish krona account by transferring money say to the Stockholms Enskilda Bank? A. Well, that wouldn't exactly mean opening an account. Such transaction would probably be handled in the following way: I. G. Farben, having requested us to pay Swedish krona so and so many to Stockholms Enskilda Bank, without giving further instructions, then we would debit the account of I. G. Farben, the Swiss franc account of I. G. Farben, with the counter-value of the requested transfer to Stockholms Enskilda Bank and ask, for instance, Swiss Bank Corporation or any other Swiss bank, "Please debit our account with Swiss francs so and so and remit the sum of so and so many dollars to Stockholms Enskilda Bank."

Q. I wanted to have you think of all the accounts you might have had for Farben, because I would like to ask you whether in giving us your idea of the total you meant to include all these kinds of accounts you had for Farben. A. Yes.

Q. You were thinking of the total? A. Yes, I was thinking of the total.

Q. Every currency? A. Yes.

Q. What distinguishes the current account you mentioned

8232 from the Bereitschaftskonto? A. I do not know. That was a designation of the I. G. Farbenindustrie. I. G. Farbenindustrie wanted to have besides another current account with this designation, and I think that was in connection with internal accounts or whatever they had with the competent currency authorities in Germany. That's my guessing.

Q. What were the German words for the two types of accounts? What is "current account"? A. Current account would be just "Bank Konto."

Q. Bank Konto? A. Or "Kontokorrent." Better Kontokorrent. It's current account. It's the same.

Q. I see. And the other German word? A. Bereitschaftskonto. Well, it seems to be a special term. I have some difficulty to translate it. It indicates in my opinion something like that, that the owner of such an account may at any time dispose of this money. Now, already the current account indicates the same thing. So from a Swiss point of view I cannot see much of a difference. Therefore, I am drawing the conclusion that it must be in connection with their special difficulties they had in view of the German currency restrictions and regulations. They had perhaps their permission to have available always so and so many Swiss francs. But that is more in the line of guessing.

8233 Q. You don't know the difference between the two accounts? A. No.

Q. To your own knowledge? A. No.

Q. You told us in your earlier testimony that you were an expert in German foreign exchange matters. A. Well, that would be an exaggeration, but, of course, I had some knowledge as banker of the matter.

Q. But your distinction between these two accounts is pure speculation? A. Yes. Very often I saw that I. G. Farben requested us for instance to transfer an amount

from this account to the other and vice versa without me having the slightest idea why they did it.

Q. And you haven't got the slightest idea as to why they had two accounts with these two separate titles? A. I think it might lie in the line I just tried to speculate on.

Q. Now, have you any idea of the total of these two kinds of accounts and all the foreign currency accounts say at the beginning of the European war in September 1939? A. It would be guessing.

MR. WILSON: Wait a minute. The total of both?

THE WITNESS: All together.

8234 MR. SCHWARTZ: Total amount at that time.

MR. WILSON: On a given day?

MR. SCHWARTZ: No, the period September 1939.

MR. WILSON: I don't understand you.

MR. SCHWARTZ: I am asking the witness whether he has any idea of the total of the accounts he held for Farben in about September 1939.

MR. WILSON: As a maximum balance?

MR. SCHWARTZ: Of course.

THE WITNESS: Yes.

MR. SCHWARTZ: He understands it very well.

MR. WILSON: You can't add two days together in the banking business.

MR. SCHWARTZ: Of course not. I know that.

THE WITNESS: Well, I think I understand what you mean, Mr. Schwartz, but I cannot, of course, remember such a balance, and such a balance would be in perhaps one day so and so much and the other day, after a great disposal, perhaps half the sum, so it would be pure guessing.

By MR. SCHWARTZ:

Q. Well the highest amount on any day between July 1939 and October 1939 in the period of the beginning of the European war. The highest amount on any day. A. Perhaps several millions. But that is in the line of guessing. I mean I'm not sure about it.

8235 MR. WILSON: Mr. Schwartz, before you go to another matter, if that is what you are doing,—

MR. SCHWARTZ: I'm not. I'm not going on to another matter. It's the same matter, but if you have something—

MR. WILSON: Since it does involve apparently an exhibit, let me make a little statement for the record.

MR. SCHWARTZ: Sure.

MR. WILSON: I don't know that you and I are in disagreement about this, but I thought that at some time this ought to be mentioned. Essentially I conclude that this deposition which you are taking is a discovery deposition. I am aware of the fact that there may come a time when you will seek to use against the plaintiff admissions that this witness might make which in your judgment might be so used.

In the course of the deposition— and my mind is refreshed by the experiences of the last two days— you have, as is your custom, attached or rather had written into the record exhibit numbers with reference to certain documents. Now, I am not sure whether you intend to offer these documents as part of this deposition in the same sense that you would attempt to offer them in evidence in the course of a trial in a cross examination of a witness.

Whether you do or whether you don't, I want to make my position entirely clear, and that is this: If the identification of these documents in the record is an indication that
8236 you may treat these documents as admissible against the plaintiff in this case, I want you to know that I will object to them unless they are of a character to have been the product of the plaintiff or of some authorized agent of the plaintiff.

For example, in connection with the two documents which Mr. McGraw showed to the witness, No. 14020 and No. 14162, these are, respectively, a memorandum written by a German in Germany and a letter written by Germans to some branch of the German government.

Now, it may be unnecessary for me to say this, and these are only typical of many others, but the mere fact that you

have shown these to this witness does not in my opinion give them an authenticity of any character or a kind of standing which makes them admissible against this plaintiff, and I want the record to show that except in the instances which I have referred to in principle a moment ago we object first to the attachment of these documents to the deposition if they are designed eventually to become evidence, and we object to these documents being introduced in evidence at any time as being purely hearsay and in no wise or for any other reason having the status of admissible evidence.

Now, I will be very glad to take each document separately and put it in its appropriate category in my thinking, but for the sake of what I am saying now, any document that emanates

8237 out of Germany is objected to as being hearsay, as not being competent proof of any fact or thing stated therein.

* * *

8238 By Mr. Schwartz:

Q. Mr. Sturzenegger, you will note that this appears to be a copy of a letter from I. G. Farben to the Reichsbank directorate dated August 29, 1939, marked "Confidential," and signed, "Heil Hitler, I. G. Farbenindustrie Aktiengesellschaft," with names which were on the original but now merely say "name signed underneath." And it refers to conversations of the last few days—that is sometime before August 29, 1939—during which Farben informed the Reichsbank that "in view of the political situation we intend to have gold bought agains the approximate amount of twenty

8239 million Swiss francs in our disposable credit accounts with Greutert & Cie., Basle, and to deposit it with yourself in the name of Greutert," and further that the Reichsbank considered this undesirable and Farben has therefore placed at the Reichsbank's disposal at Schweizerische Nationalbank, Zurich, ten million Swiss francs.

Now, what is the German word that we have translated

as "disposable credit accounts"? A. Well, that is—the German word?

Q. Yes. A. Is here "Kredit-Bereitschaftskonto." It is the same Bereitschaftskonto I mentioned.

Q. So apparently in August 1939 or on one day in that month Farben had at least twenty million Swiss francs in its Kredit-Bereitschaftskonto with you? A. Yes. Looks like that.

Q. Does it help you to remember they had at least twenty million Swiss francs with you then? A. No, it doesn't refresh, but it seems to me just an example of what I tried to explain, that they had it until the 23rd of August, and after this disposal of ten millions there remained as a consequence only ten. So you say—

Q. It fluctuated? A. —it fluctuated. Yes.

Q. Apparently too Farben proposed to the Reichsbank

8240 that they deposit twenty million Swiss francs with the Reichsbank in the name of Greutert but that wasn't done. A. That wasn't done, no. Certainly not.

Q. Did you ever know of a Farben plan to deposit such a sum in the Reichsbank? A. No.

Q. In your name? A. No, didn't know anything of it.

Q. Did you ever discuss such a plan with Farben? A. No. I cannot remember any such.

* * *

8243 Q. Did you participate in that change in the contractual relationship between Farben and Chemie that materialized in about early September of 1939? A. Well, I occupied myself with many things on the I. G. Chemie side, and, therefore, I was acquainted with the

8244 wishes of I. G. Chemie and took part in many discussions. In so far, that's right.

Q. But I don't think you have answered the question.

MR. SCHWARTZ: Read the question.

(The reporter read the question.)

THE WITNESS: Didn't I give already my answer?

MR. SCHWARTZ: Read the answer.

(The reporter read the answer.)

By MR. SCHWARTZ:

Q. I'm afraid you still haven't answered my question. I asked whether you participated in the amendment to the Farben-Chemie contractual relationship, amendment from option to first refusal. A. Yes, with this explanation that of course it was on the I. G. Chemie side.

Q. But you're clear you participated in the problem of amending the option guarantee to a right of first refusal? A. Yes. I do not remember in what my participation consisted, but I was occupied also with these matters, took part in them.

Q. Then you don't remember any negotiations on that subject but you feel that you might very well have participated? A. I remember that discussions about the subject were made, but I do not remember if this topic was discussed

8245 during my visit to Berlin.

MR. WILSON: Can you comfortably quit now?

MR. SCHWARTZ: Just another moment or two.

By MR. SCHWARTZ:

Q. Do you remember when the change from option to first refusal first was broached? A. First was—? Pardon me?

Q. First was raised by anybody? A. I couldn't give you the date.

Q. Is there an occasion that perhaps helps you fix it in your mind? A. No. Let's see. The intention on the side of I. G. Chemie to free I. G. Chemie from the contractual binding with I. G. Farben lies far back but for I. G. Chemie was not easy to achieve this aim. And when it was realized that the contract could not be, as intended, cancelled in a short time, then I. G. Chemie tried to at least amend the

contract. And that is one of the phases, chief phases, in this course.

Q. Do you remember, for instance, that the occasion of Mr. Greutert's funeral was the first occasion on which this change from option to first refusal was broached? A. I do not remember if it was the first, but it is highly probable that then it was discussed too, but I think that it was attacked, tackled, before.

8246 Q. Mr. Greutert's funeral must have been very early in September 1939, was it not? A. Yes.

Q. Are you clear that it was ever discussed before the day of the funeral? A. I believe it was. I'm not absolutely sure about that. To the best of my knowledge.

* * * *

8303 Q. I believe, Mr. Sturzenegger, in February, when Stickstoff was discussed with you, you agreed that with the exception of Jeannot all the other directors or members of the board or Prokurists were persons who were in some way or another associated with Sturzenegger et Cie. or I. G. Chemie. A. Well, let us go through the list. We have Mr. Haller—certainly the case.

Q. And Mollwo? A. Certainly the case.

Q. And Mr. Greutert? A. Only with the reservation that Mr. Mollwo, as you know, left the firm in '38.

Q. But he was thereafter associated with Sopadep? A. Yes.

Q. Which I am including for this purpose, the circle firms. A. Yes.

Q. And Roesch, who was a director from '32 to '41,
8304 according to my information? A. Well, of course, he was director of I. G. Chemie, as you know.

Q. And Werder? A. Werder is a Prokurist of my firm.

Q. And he has been a Prokurist for Stickstoff since 1930? A. That's right.

Q. Since the organization of the firm? A. Yes.

* * * *

8440 By Mr. Schwartz:

Q. Mr. Sturzenegger, I would like to return to the difference between the Kredit Konto and the Kredit-Bereitschaftskonto, the two accounts that Farben had with you. Have you been able to think of anything that differentiates the two accounts? A. Well, I think that the meaning of the word "bereitschaftskonto" indicates already the direction of a certain difference. It seems, namely, to indicate that the balances on Kredit-Bereitschaftskonto or Bereitschaftskonto—I don't know which one was the exact name—could be used probably without further formalities. That, of course, with respect to the internal German authorities. That's my conception of it.

Q. Do you mean that the sums in the Kredit-Bereitschaftskonto could be drawn from the account without special

8441 permissions from German authorities? A. Something like that,

Q. While the sums in the Kredit Konto required permissions? A. Probably. I am not sure about it, but I think some difference is expressed already by the wording, by the expression "bereitschaftskonto."

Q. Do you mean expressed by the wording to the extent that "bereit" means "ready"? A. That means "ready."

Q. And "schafts" means the noun for "readiness"? A. Yes, that is.

Q. So that "bereitschaftskonto" means account ready to be drawn upon? A. Yes.

Q. But the difference you have mentioned is the difference with respect to the readiness for Farben— A. Yes.

Q. —and the German authorities. A. Yes.

Q. Was there any difference with respect to you? A. No. You see, these balances with us, as other balances of German firms with Swiss banks, were from the Swiss point of view entirely free. We in Switzerland didn't have currency restrictions. So if a German had a balance on

8442 his account in Switzerland, he could draw on this account. He could dispose of this account. There were no restrictions.

Q. It had no significance to you in terms of whether you had granted a credit which went into one account and not into the other? A. No, not to my recollection.

Q. That is, the money you lent Farben did not go into one of these accounts as against the other? A. No, no. The money we lent Farben—I'm thinking of those special credits mentioned in the report—they were charged or debited I. G. Farben on the respective advance account which had nothing to do with the current account or the Kredit-Bereitschaftskonto.

Q. I see. Whenever you made a loan you set up a separate account which was the advance, and they could then draw? A. Yes, they could then draw.

Q. So, so far as you were concerned, Farben could draw on the Kredit-Bereitschaftskonto or the Kredit Konto and you didn't care which? A. That's right.

Q. And it had no difference such as the time? There are time deposits in banking. One wasn't time deposit as against the other a demand deposit? A. No.

8443 Q. No difference? A. No, they were both, according to my recollection, demand deposits.

Q. But no difference from your point of view at all? A. No difference I could think of except the explanation I tried to give you.

Q. Yes. Do you remember whether one account was on an average larger than the other? A. I do not remember that. I think both accounts fluctuated, and sometimes we were requested just to make a remittance out of the one account for account of I. G. Farben or a third party to another Swiss bank. But I think that happened indifferently—I mean with respect to both accounts. That is my recollection.

Q. Was there any difference in the source of the money

which, by and large, filled up these two types of accounts? A. No, I couldn't think of such difference.

Q. Did, for instance, one get replenished by export proceeds of Farben while the other was replenished by credits from Germany? A. No, I couldn't think of such difference. There may have been differences, but we didn't care about such a thing. We thought, "Well, that's up to the Germans." More an internal matter of I. G. Farben.

Q. You don't remember such differences?

8444 A. No, I do not remember.

Q. Did one, for instance, receive remittances from the Reichsbank while the other did not? A. I couldn't remember that.

Q. I think you mentioned that you did business with Farben in dollars as well as in Swiss francs? A. Yes.

Q. And weren't there occasions say in 1939 and 1940 when Farben remitted to you sums in dollars, large sums in dollars? A. Well, that may have happened. No doubt.

Q. I am trying to refresh your memory. In New York, remitting to you dollars in New York? A. Yes.

Q. At the National City Bank? A. The National City Bank.

Q. I will give you the documents in a moment, but I have a group of documents here which show—your letters largely—that Farben, and in one instance Farben through the Koopmannsbank and in another instance Farben through the Laenderbank, remitted to you at the National City Bank $100,000 in January 1939, $700,000 in February 1939, $800,000 in February 1939. I'm sorry. The $700,000 was also in January 1939. And again $40,000 in March 1940 and $40,000 in August 1940 and $100,000 in August 1940. I'm

8445 sorry again. The second $40,000 was in July 1940. Would you like to see them first or can we just discuss them for a moment? Suppose we show them to you. A. Yes.

Mr. Schwartz: Will the reporter please mark documents

10245, 10270, 10353, 12731, 13612 and 13887—one copy of the photostat of original text in each case.

(The documents referred to were marked for identification as Defendants' Exhibits 84-10245, 85-10270, 86-10353, 87-12731, 88-13612, and 89-13887, respectively.)

(The witness examined the documents.)

By Mr. Schwartz:

Q. You will note that 84, 85 and 86 are photostats of letters from you to National City. A. Yes.

Q. And that 87, 88 and 89 are photostats of forms which I can tell you—or you may be familiar with them—are National City forms. A. Yes.

Q. Then you haven't any doubt as to these letters and what they purport to say—these documents 84 to 89? A. None. They seem to me to be clear.

Q. Do you recognize the signatures on 84-6? A. Yes, these are the signatures of persons authorized

8446 to sign for my firm.

Q. Do you remember this series of dollar remittances to you from Farben in 1939 and 1940? A. No. I remember quite well there were many remittances. I do not recollect these specific remittances.

Q. But as a series, as a total amount? A. Yes.

Q. There are about $1,700,000 or $1,800,000 here. A. Yes. It's a very considerable sum.

Q. Do you remember that sum remitted to you in series in dollars or that approximate sum? A. No, I do not know if these are all remittances, if there were more, but I remember quite well there were very large remittances, especially during this time.

Q. Do you remember what the purpose of sending you this money was? A. No. The purpose you mean from—

Q. In sending you this money. A. Well, I should say we had then to credit I. G. Farbenindustrie. It means that I. G. Farben for some reason or the other wanted apparently

to concentrate large remittances on the balance with our firm.

MR. WILSON: Mr. Schwartz, excuse me.

THE WITNESS: You haven't seen them?

MR. WILSON: Yes. There are six, aren't there?

8447 MR. SCHWARTZ: There are six.

MR. WILSON: Go ahead. I was a little confused about your descriptions.

By MR. SCHWARTZ:

Q. Do you remember Farben's purpose in concentrating these dollars in New York at your disposal with you? A. No. I have only a vague recollection that amongst those remittances may have been large remittances from South America.

Q. I see. A. I'm not sure whether those remittances you showed me are all concerned with South America, but I have a recollection remittances from South America went through New York.

Q. But that was the case when the remittances went to you in Basle. We saw that to be the case the other day, did we not? A. Yes.

Q. But here we have them to your account by order of Farben. A. Yes.

Q. At New York. A. Yes.

Q. Do you still think that these were moneys from South America? A. Well, I'm not sure. It's more guessing.

8448 Q. Well, did the moneys from South America come to you at Basle and then did Farben retransfer them in dollars to you at New York? A. No, I shouldn't say so.

Q. Then can you strain your memory as to where this more than a million and a half dollars might have come from? A. It would be guessing, Mr. Schwartz.

Q. Would you guess for us, please? A. Well, may have been another source of exports. I mean the result of exports of I. G. Farben.

Q. And another source—you mean by "another" other than South America? A. Other country, for instance.

Q. For instance? A. Well, for instance, the United States.

Q. I see. It might have been payments that were made to Farben, Farben's account, in some American bank? A. Yes.

Q. Which Farben then transferred to you? A. Yes, could have been the case.

Q. Where else might it have come from? A. Well, theoretically it's possible from nearly any part of the world. Could also have been the Far East.

Q. I see. It could have been money remitted to Farben at New York from the Far East which Farben then turned around

8449 and transferred to you? A. Yes. For instance, if the stipulation would have been the money resulting from the exports would have to be paid in dollars, so it would seem to me natural to have it transferred through New York. Mustn't be, but could have been.

Q. And you said that Farben's reason for putting them at your account would have been, of course, to concentrate dollars in a particular city or a particular country? A. Pardon me?

Q. Concentrate its dollar assets in New York? That is the obvious reason? A. Yes, it seems like that. Yes.

Q. Now, can you tell us what might have been behind that? The purpose for concentrating dollars in New York to your account? A. No, I couldn't say that, Mr. Schwartz.

Q. During this period I think you were acting as Farben's paying agent in the United States, were you not? A. Well, the term "paying agent," that is I think popular here. It's not popular in Europe or in Switzerland. Just a banking connection, and we had different banking connections in New York, so if Farben wanted the money to build up a balance with us and the money flowed in in dollars, so it was not unnatural that those remittances went to New York

8450 and then to us to Farben.

Q. But you were acting during this period as the banker for Farben who made payments at Farben's direction to people in the United States? A. Well, one of the bankers I should say. I am not sure whether the other banks did not do similar remittances.

Q. But you know that you did? A. Yes.

Q. You know, don't you, that when Farben wanted to pay out money to its business connections such as Standard Oil— A. Yes.

Q. —or its little agency Chemnyco, that you made the payments? A. Well, I mean we did payments, of course; if Farben requested us to make any remittance and there was no legal obstacle, of course we were, as any other Swiss bank would have been, obliged to carry out the order.

Q. Of course. But you remember, don't you, that during this period at Farben's direction you paid out moneys to various and sundry people in New York? A. Why, I recollect that there were not only incoming remittances but also remittances on the order of I. G. Farben. That's true.

Q. But certainly the money did not remain to this day? A. No, no.

8451 Q. The money left? A. The money left no doubt.

Q. Yes. So you paid it out to various people? A. Yes.

Q. And you remember, don't you, that you paid it out to various people and corporations in the United States? A. Well, and in Switzerland I should say.

Q. All right. A. Wherever we were requested to pay it out.

Q. I was asking you about the United States, and you keep telling me about something else. Do you remember that you paid it out to people and corporations in the United States? A. I only say that because your question was, if I'm not wrong, "You paid 'it' out?". It seems to imply, as it were, the whole sums. And I couldn't say that.

Q. I see. But you paid at least part of it out? A. Yes, I should say so.

Q. Will you note that in No. 84 the money came through Koopmann's Bank, $100,000, and that in No. 86 it came from Deutsche Laenderbank,— A. Yes.

Q. —$809,217.55. A. Yes. I see that.

Q. Does that help you perhaps to remember where
8452 the
money came from, the true source of the money? A. No, not at all.

Q. Do you remember any cases in which money you got in Basle and turned over to Laenderbank was almost immediately retransferred to you, New York? A. I think that happened in many cases.

Q. Why should that have been done? It would seem like such a long circuitous way to get money around. A. I do not know, Mr. Schwartz.

Q. Do you have any idea? A. Well, may I perhaps— I haven't got perhaps the full sense of your last question. Therefore, may perhaps the reporter repeat it?

MR. SCHWARTZ: Read the last two or three questions.

(The reporter read the last three questions and answers of record.)

THE WITNESS: No, I do not know.

By MR. SCHWARTZ:

Q. Have you any idea? A. It doesn't come up now to my memory.

Q. Could you guess for us? A. I couldn't even guess. May be that you can refresh me by just showing me more documents. I do not—

Q. Well, my question doesn't go to the kind of thing that is in documents, Mr. Sturzenegger.
8453 A. Yes.

Q. It goes to why money should have gone to Basle to you and then to Laenderbank for Farben and then to

New York for you and describe a circle, so to speak. Why it should have been done that way. A. Well, that's more speculating.

Q. Please. A. I think that in some cases or in many cases we were requested to convert the money into Swiss francs, and that, of course, could have been involved also in remittances again to New York.

Q. I don't understand that. A. You see, —

Q. Give us an illustration, starting at the source. A. I will give you an illustration. Maybe it's not the picture you want to cover. But if we have got a credit advice from New York, $300,000; and that for account of I. G. Farbenindustrie or Laenderbank, then Laenderbank or Farbenindustrie could have requested us to convert such money into Swiss francs, crediting their Swiss current account or Swiss bereitschaftskonto.

Then we could have handled this in different ways. For instance, we could have called up the Credit Suisse or another Swiss bank and sold them the dollars. That means we in such a case would have instructed the National City Bank or wherever

8454 the dollar balance was in New York to pay that to the Credit Suisse and the Credit Suisse in turn would have credited us in Swiss francs. We in turn would have credited I. G. Farben with the corresponding Swiss francs.

I think just that is trying to give you an idea how such a matter technically could have been handled. I am not sure whether it covers—

Q. No; I don't think it does. A. —the picture you want.

Q. You said there were lots of cases in which money came to you in Basle and was paid to Farben directly or through Laenderbank and then was immediately returned to New York in dollars—the kind of result we are faced with here: dollars to your account from Farben in New York. A. Yes.

Q. And I asked you why money should have traveled from New York to Basle to Farben to New York again. A. Well,

other reasons could have been that I. G. Farben had obligations to meet in the United States. I only do not see then why the money had to go through our firm.

Q. Nor do I. I'd like to know why money should have traveled the perfect circle. A. No, that I cannot make an idea why this was.

Q. You remember, by and large, in what directions you paid out these dollar balances to your account in New York?

8455 A. Pardon me?

MR. SCHWARTZ: Read the question.

(The reporter read the question.)

THE WITNESS: By what directions do you mean by banks?

By MR. SCHWARTZ:

Q. To whom and where? A. I think mostly to banking institutions in New York.

Q. Do you remember that a substantial number of them—though perhaps small in amount—were to Chemnyco? A. Chemnyco could also have been under those. Then the remittances probably would be to National City or another bank for account of Chemnyco. I do not recollect a specific case.

Q. We haven't identified Chemnyco. Would you please tell us what Chemnyco was? A. Well, it was, according to my recollection, a smaller firm drawn up in New York by people in connection with the G.A.F. or the American I. G. I think it was. It lies far back. And one of the purposes of this corporation may have been just to render service to the gentlemen that came over.

For instance, you know that many German people, technical staff, went over and back to—well, I should say in connection with the technical and the know-how arrangements between I. G. Farben and the American firm. And if I'm not wrong,

8456 this Chemnyco had to do with—had their tasks in such a picture.

Q. You mean to help out the arrangements for the sending of technicians from Farben to A. I. G.? A. Yes, for instance.

Q. Yes. And other things the firm did? A. Well, I do not recollect what they did. Q. Well, they were the general all-purpose agency of Farben in New York, were they not? A. Yes. Something like that.

MR. WILSON: Kind of a service agency?

THE WITNESS: Service. That would be the right expression. Service. Yes. To render services in all respects, especially in the direction I showed you.

MR. SCHWARTZ: Will the reporter please mark documents 12499, 12861 which has two pages, 13409 which has one page, 13382 which has one page.

(The documents referred to were marked for identification as Defendants' Exhibits No. 90-12499, 91-12861, 92-13409, and 93-13382, respectively.)

MR. SCHWARTZ: I hand you, Mr. Wilson, 91, 92, 93 and 90. We are not putting in translations because they are pretty clear or self-evident on their faces.

MR. WILSON: Shall I pass them to Mr. Sturzenegger?

MR. SCHWARTZ: Please.

8457 (The witness examined the documents.)

THE WITNESS: I have read them, Mr. Schwartz.

By MR. SCHWARTZ:

Q. You will note that while No. 90 does not show any signatures, that No. 91, 92 and 93 are photostats of letters from your firm to National City and bear signatures which I assume you recognize. A. Yes.

Q. And each of the four of them shows a payment by you by order of Farben to Chemnyco in New York of $20,000 to

Chemnyco, $20,000 to Chemnyco, $16,000 to Chemnyco, and $16,000 to Chemnyco? A. That's right.

Q. There is also a payment of $5,000 or some-dollars to Hutz & Joslin? A. Yes.

Q. Hutz & Joslin was what, Mr. Sturzenegger? A. Well, that was a—

Q. I'm sorry. Let me add the dates are February, April, June and June 1940. A. Yes, according to these documents. Yes. Well, Hutz & Joslin was a small firm created I suppose long years before the war by the people closely connected with American I. G. Chemical Corporation. I do not know for what specific purposes this firm was drawn up. May be in connection with

8458 patent questions or other questions. That's my recollection.

Q. They handled patent matters for Farben, did they not? A. I think so.

Q. I notice that in both cases of Chemnyco and Hutz & Joslin you mentioned that they were drawn up and created by people close to A.I.G. Those people were also at that time certainly close to Farben? A. Well, according to the mutual agreements they had about technical matters and know-how I should say. I do not know whether they were dependent.

Q. But those people who organized Chemnyco and Hutz & Joslin were close to Farben, even aside from their connections with A.I.G.? That is, they were either recently from Germany;— A. Pardon me?

Q They were either recently from Germany or they had been employees of Farben? A. I do not know for instance. Joslin, for instance, I think was—just the name seems to indicate American if I'm not wrong. And Hutz—well, I may be mistaken, but I believe it was the son of a Mr. Hutz who had high position in the American I. G. picture. I think he was American too. I don't think they were formerly in Germany. I don't know it.

8459 Q. And the people in Chemnyco or the people who created and managed Chemnyco—? A. Well, I do not recollect which names figured there in Chemnyco. Well, I always thought that at least close connections between Chemnyco and American I. G. people existed. How they were I do not know.

Q. But were there close connections also between Chemnyco people and Farben people? A. Well, as it was, as Mr. Wilson called it, I think in fact it was a kind of service agency, so I should say just in the normal course of business that was the case.

Q. Now, these payments to Chemnyco shown by Exhibits 90, 91, 92 and 93, do they help you to remember the payments made to Chemnyco at Farben's order in that period? A. Well, it appears that payments were made.

Q. Do you know that they were for relatively small amounts? A. Yes.

Q. $20,000? Have you any idea to whom you paid out the big bulk of the more than a million and a half dollars that was to your credit in New York from Farben? A. Well, I'm trying to strain my memory. I can't make it out. You remember, once we made—I think it was mentioned during one of the last days' depositions—we made a large amount in dollars to I think National City Bank for

8460 account of a Swedish bank. That in connection with the payment I. G. Chemie had to make when a dividend guarantee contract was cancelled.

Q. But you said that was Chemie's money you were paying. A. Yes. Sure.

Q. You were paying to Farben in that case? A. To Farben, yes, for account of I. G. Farben.

Q. But this is money that came to you from Farben? A. Yes.

Q. This over a million and a half dollars? A. Yes. That is, of course, a different thing.

Q. I'm asking whether you remember at all where this

money went of the bulk of it, the million-dollar part. A. No, I do not recollect.

Q. For instance, one of the sums you received was a very exact sum in No. 84—89. They were all round figures except one, No. 86, which was $809,217.55. A. Yes.

Q. Does the exactness of the sum and the large size of the sum help you to remember anything? A. No, it doesn't come up in my memory.

Q. You note that that was the one that came from Laenderbank. A. That's right. That's right.

8461 MR. SCHWARTZ: Now, I'm right, am I not, that the Bank of Manhattan is entirely different from the National City?

MR. WILSON: Yes.

By MR. SCHWARTZ:

Q. You also had an account there, did you not? A. Yes.

Q. Was there any difference in function or purpose between your account at National City and your account at the Bank of Manhattan? A. I couldn't think of such.

Q. For instance, was one used more for Farben business than the other? A. No, not to my recollection.

MR. SCHWARTZ: Will the reporter please mark No. 13449.

(The document referred to was marked for identification as Defendants' Exhibit 94-13449.)

MR. SCHWARTZ: There are only a few German words here, Mr. Wilson, or Mr. Wilson and Mr. Sturzenegger. We haven't given a translation. But as you see it is a letter from Sturzenegger to Bank of Manhattan, 24 June 1940, and it asks, "We beg you to debit our current account with the following payments by order of I. G. Farben." And then there are a series of names and amounts—two dollars, ten dollars, and so on. And, you note, by order of Farben Leverkusen, Farbenindustrie Film A. G. Wolfen, Farben Frankfurt, and

8462 others by order of different parts of Farben.

MR. WILSON: Yes.

(The witness examined the document.)

MR. WILSON: Before you ask a question, after Mr. Sturzenegger has looked at that again, let me look at it again. I didn't get through analyzing the payments. Is that June?

MR. SCHWARTZ: June 24, 1940 was the date.

THE WITNESS: I have seen it.

By MR. SCHWARTZ:

Q. Let's look at it together, Mr. Sturzenegger. A. Yes.

Q. You note there are payments of two, ten, four, three dollars, and that there is a total of maybe 15 such payments? A. Yes.

Q. And the highest amount is $200? A. Yes.

Q. And down to $2.50 by order of different branches of Farben to different people in the United States. Publication, steamship guide, Chemnyco, the Superintendent of Documents, U. S. Government, $4.13, General Aniline Works $36.00, the Society of Motion Picture Engineers $7.50, Guaranty Trust $50 for Gunsten der Assicurazioni Generali, Triest, and so on.

8463 Do you remember executing Farben orders for a variety of small payments like that? A. No, I do not recollect them, but it appears that such payments have been made.

Q. Well, certainly the signatures on this one you recognize? A. Yes, no doubt.

Q. But do you remember other groups of such payments in such variety and amount? A. Well, there may have been. I do not remember them.

Q. But to your knowledge whenever Farben had such a payment to be made you made it by order of Farben? A. I should say so. Of course, I cannot exclude whether similar payments were not made through other Swiss banks.

Q. Well, do you know of another Swiss bank that Farben

gave orders to make such payments? A. No. It was not up to us to inquire into such matters.

Q. Well, but, Mr. Sturzenegger, do you know of another Swiss bank which received orders from Farben to make such kinds of payments in New York? A. No. The only thing I wanted to point out I know they had banking connections I suppose with all important Swiss banks.

8464 Q. But you don't know of another Swiss bank which executed such orders as these? A. No.

Q. Apparently you received directions to make such payments from different parts of Farben. Farben Leverkusen, Farben Frankfurt, Farben Zentralfinanz, and so on? A. Yes. I cannot say whether the orders in this specific case were received by the different branches. May be that just I. G. Farben Zentralfinanzverwaltung wrote us, "Please make the following payments and charge our account by order of the named branches."

Q. What was the practice? That you received directions to make payments from one source in Farben or from several as this letter seems to suggest? A. Well, my recollection is that at least in most cases they came from Zefi.

Q. Central Finance? A. Yes.

Q. And that it would mention by order of Farben Leverkusen—A. Pardon me?

Q. And that such a direction might direct you to pay by order of Farben Leverkusen? A. Yes, might say.

Q. But did you get at least in some instances direct

8465 instructions from Leverkusen or Frankfurt or Bitterfeld or Bankabteilung, Frankfurt to make payments by their order? A. Well, I do not recollect such cases but it's possible.

Q. Did you have separate accounts on your books for these different branches of Farben? A. Not for all, but for one or the other I suppose we had. We had for instance for Frankfurt, which is not figured amongst them but belonged to the Farben concern, too, Ammoniakwerk, Merseburg.

Q. For Leverkusen? A. Leverkusen I'm not sure whether it was still during the war. Before I should say yes.

8466 Q. There is apparently a separate corporation, I. G. Farbenindustrie A. G. Filmfabrik Wolfen. Is that a separate corporation? Well, I remember I heard the name. I believe it is a plant which belongs to I. G. Farben.

Q. I see, like Leverkusen, a branch. I see. Did you have a separate account for them? A. Not to my recollection.

Q. Bitterfeld? A. Not to my recollection.

Q. For the Patentabteilung of Farben? A. No.

Q. For the Farben, Berlin? A. Of course, Farben, Berlin. That is the Zefi.

Q. Farben, Berlin, is the same as Zefi? A. Yes, I should say.

Q. Bankabteilung, Frankfurt? A. Yes. That is what I tried to mention.

Q. Well, but Bankabteilung, Frankfurt is not Farben, Frankfurt,— A. Bankabteilung, Frankfurt is—

Q. —in terms of the account kept with you, because here, you see, there is one group on order of Farben,

8467 Frankfurt, and one group— A. I should say the Bankabteilung is another department of Farben.

Q. Oh, yes, it certainly seems so. The banking department of the Frankfurt branch of Farben, but I wanted to call your attention to the fact that there is a group of payments by order of Farben, Frankfurt, and another group, on the next page, by order of the banking department of Farben. A. Yes, yes.

Q. They apparently were separate in financial terminology, then. A. Yes.

Q. And did you have accounts for both? A. I remember only one.

Q. Only one account for Frankfurt? A. For Frankfurt, yes.

Q. About how many such plant or branch accounts for Farben did you have? A. Well, I should say three, four, five, about.

Q. Separate plants or branches? A. Yes.

Q. Were such accounts always split up into Kredit-Konto and Kredit-Bereitschaftskonto? A. I did not get your question, Mr. Schwartz.

Q. Were such plant or branch accounts split up into
8468 Kredit-Konto and Kredit-Bereitschaftskonto? A. No, to my recollection, if I am not mistaken, this splitting up was only the case in our banking relations to Zefi.

Q. Which account was headed what? Farben, Berlin, or just Farben, or Farben, Zefi? A. I think it was I. G. Farben, Zefi, Berlin.

Q. I see. Here there is a reference to Farben, Berlin. Is that different from the central main account of Farben, Zefi? A. Let me see this.

Q. The bottom one. A. I am not sure whether they just left out Zefi for some or the other reason. You see, just as I see the matter, legally the chief domicile was Frankfurt, but as it was a great organization, the organization was split up and the financing matters were chiefly concentrated in Berlin. It was at the Zentralfinanzverwaltung of Zefi. I do not know whether it means Zefi or not.

Q. I see. You will note, too, that these amounts are very small, and that the whole total which you gathered here together in the letter probably does not reach $1,000. Has it occurred to you, in thinking of this letter, where the $1,500,000 might have gone? A. No, it doesn't.

8469 Q. This may be our fault, that we do not have the document showing where the 1,500,000 went. I just wondered whether you could help me. A. No, I do not recollect.

Q. Have you noticed, Mr. Sturzenegger, that every one of these is a payment to somebody in the United States, with the exception of the $50 payment to the Guaranty Trust for the benefit of Assicurazioni Generali, Triest, unter Angabe der Nr. A. G. 699, under reference to No. A. G. 699. Does that strike a chord in your memory that the only one here

outside the United States is to this Italian insurance company? A. You mean that that refreshes my memory?

Q. Yes. A. No.

Q. You remember we saw a document showing some money paid by Farben to this company. A. Yes.

Q. Which came back to Farben through you. A. Yes, I remember in this last deposition, yes, the name was mentioned.

Q. Does that help you to remember the course of payments between Farben and this Italian insurance company in this period? A. No, it doesn't help me.

Q. Do you remember whether in making payments to them

8470 you made them through New York for Farben? A. Well, if requested to do so, we certainly would have done it.

Q. Wouldn't it have been simpler to make a payment to an Italian company by giving them payment through an Italian bank? A. It might seem so, but I am not sure how the currency restrictions were in Italy at this moment. It may have been the case, but it is more speculating, that he couldn't dispose without difficulty of his balances in Italy and therefore the payment had to be made in a free currency. That is possible, but I don't know the fact.

MR. SCHWARTZ: All right, let's recess.

* * *

8623 MR. MCGRAW: . . .

Q. Did you know what Mapro was doing in August 1939? A. Well, I believe that they financed some sales companies, and then I do not know what date, do not know if it was such that it was at this time they took over a participation in the Chehamij.

Q. And the Chehamij was involved also in trustee functions for Farben? A. Was certainly involved in the Farben matter.

Q. And the financing of the sales companies involved companies in India? A. You mean that to refer to Mapro?

Q. That's right.

8624 A. Well, I remembered this specific parcel of Bayer Remedies, I believe, shares, were in agreement existing between Mapro and Parta.

Q. Isn't it a fact, Mr. Sturzenegger, that you entered into these agreements with Fritze and the Koopmansbank in August 1939 in order to give your firm the right to protect the interests of Farben in Mapro? A. No, it was not the intention.

Q. It was not the case? A. No.

Q. But you were willing to advance credits to other shareholders of Mapro and to accept options on their shares in the company, knowing that Mapro was engaged in cloaking activities for Farben. A. Well, I didn't think of that. I didn't know the details of the Mapro business, and we didn't care about the management, I think, in our time. We considered it from the investors' point of view, and Fritze, I think, told us and explained to us that he thought it would be a promising international business.

Q. You think it was a good investment in August 1939 to put money into a company which was doing business for Farben? A. Well, I didn't know that it was only doing business for Farben, and though there certainly was a certain international

8625 tension in August, nobody knew, certainly not we, that the war would break out so soon. We hoped that there would be no war.

Q. You knew that Chehamij was a cloaking operation for Farben, did you not? A. I should say so.

Q. And you knew that by the use of Mapro as a shareholder in Chehamij, the Dutch company had the advantage of apparent Dutch ownership? A. May I ask you to repeat this question, Mr. McGraw.

Q. You knew that through the participation of Mapro in Chehamij, Chehamij had the advantage of being able to

show outwardly that it was a Dutch-owned corporation. A. Well, I do not remember to what extent Mapro participated in Chehamij. And on the other hand, I think the fact that banks of first standing, as, for instance, the Amsterdamsche Bank and Hambros Bank and English Bank, also participated was kind of reassurance that the business couldn't be a bad one, or one that couldn't be undertaken.

Q. You knew from your conference in Berlin in August '39 that the Mapro was to take the majority of the stock of Chehamij, did you not? A. I do not remember that. I thought—I don't think that it was the majority.

* * *

8663 Q. Mr. Sturzenegger, I believe I asked you this morning whether you knew the names of any of the persons holding shares in the Indian companies who received loans from the Mapro to finance their stock. A. Yes.

Q. I believe you answered Parta. A. And I think I mentioned another gentleman, Mr. Heberlein, didn't I?

Q. You mentioned Mr. Heberlein. Do you also recognize the name of Grieshaber as a holder of shares in the Indian companies? A. When you mention it, now, I think he was in some way—I don't know in what company—he was in some way connected with one of the Indian companies.

Q. Do you know that his shares were financed by a credit from Mapro? A. I believe so.

Q. Now, do you recall any discussions, Mr. Sturzenegger, with officials of I. G. Farben in 1938 or early 1939 during which the matter of finding suitable shareholders for these companies was discussed? A. No, I do not recollect such discussions, but it seems to me to be obvious that it must have been discussed. It may be with Mr. Greutert, it may be that myself was approached, too. I do not remember a specific discussion.

8664 Q. You do not remember that you recommended Mr. Grieshaber to Farben as a shareholder for the Indian companies? A. I do not recall it, and—well, it is more drawing a conclusion. Mr. Grieshaber was an old

friend of Mr. Greutert. I am rather inclined to believe that it was suggested by Mr. Greutert.

Q. Do you recall that you recommended Parta to Farben as a shareholder in these companies? A. Well, I do not recollect whether the Parta was suggested by myself, but it was discussed with members of I. G. Farben, no doubt. And—

Q. Well,— A. Excuse me.

Q. Go ahead; finish your answer. A. I just wanted to say that my recollection is that Farben asked us, maybe the Greutert firm, maybe the gentlemen of I. G. Chemie, whether we could not help them to find a shareholder in this Chehamij business.

Q. We are now speaking of the Indian business. A. Well, in this connection, I do not think that the question came up. I think there was more about the individuals.

Q. Can you tell us what question came up about individuals? What are you trying to say? A. Well, I do not recall any specific discussion. I think I stated that before, but I think that we were asked to

8665 give the names of persons who perhaps would be prepared to take over nominating such shares.

Q. You were asked by Farben to find such persons? A. Well, that I do not remember; maybe Mapro, maybe Farben. I think it goes back before we had an interest in Mapro, doesn't it?

Q. You do not recall any such request made to you by von Meister or Gierlichs? A. No. I cannot exclude it.

Q. What particular qualities did they seek in the individuals who you were to suggest to hold shares nominally? A. Well, I do not know what qualifications were requested. I think the principal matter was just a person in a neutral country.

Q. Who would be reliable? A. Reliable, and who, perhaps, through another friend, would be known as a person of reliability and good standing and so on. I couldn't just give to you a specific qualification that was asked for.

Q. Was your firm asked to hold shares in the companies? A. Please?

Q. I say: Was your firm asked to hold shares in the companies? A. It may be we were asked. I couldn't say yes or no. I do not recollect. It is probable.

8666 Q. You have no recollection that in the summer of 1938 Zefi officials requested you to recommend trustees for the Indian companies? A. I have no recollection but after such persons as trustees were found I am drawing the conclusion that in some way, at some time, we or people of us must have been asked whether they could give such names.

Q. And you have no recollection that you recommended Heberlein and Grieshaber to Farben? A. Well, I do not know whether I did it or whether Mr. Greutert did it, but I think the names were given through persons of the firm. Greutert as in both cases there was an old friendship, or, at least, these persons were known to us.

Q. Is your answer that either you or Mr. Greutert gave the names of these people to Farben? A. That is probable.

* * * * * *

8686 Q. Mr. Sturzenegger, coming back to the chart, please, can you tell me whether any of the shareholders listed under Agfa Photo, Limited, have had relations with your bank? A. Well, the Axe Trading in which, as you know, we had a participation. Heberlein—maybe there has probably been an exchange of correspondence when he was asked if he would

8687 take over the stock. But he has to my knowledge never been a client. I think that is the whole of the relation.

Q. Is Mr. Heberlein connected in any way with any of the companies in the Chemie-Grentert complex which we have indicated on our chart shown to you last February which is marked Exhibit 18? A. No. No, he isn't.

Q. Do you know what companies Mr. Heberlein is con-

nected with? A. No. He is the son of an industrialist, having been on friendly terms with Mr. Greutert. I think that is the reason why this Heberlein was asked.

Q. This Heberlein whose first name I see is Hugo Heberlein is the son of the gentleman who served on the boards of a number of companies with Mr. Greutert? A. Well, I think the friend of Mr. Greutert, I think his name is Hugo Heberlein, and that is the old one I mean. He was, if I'm not mistaken, on the board once of some companies related to us. Maybe the Technik und Finanz A. G.

Q. Is that this Heberlein? A. No, according to my recollection, which perhaps is not clear enough, this Heberlein is the son of Hugo Heberlein. It would be Fritz Heberlein if I'm not wrong.

Q. Fritz Heberlein is the son? A. Hugo is the old one.

8688 We list Hugo, if you look at the paper attached to the chart.

MR. WILSON: Does his title help you any? What was the son's title? Was he a doctor of law?

THE WITNESS: The son is a doctor of law. Then I may be mistaken.

MR. WILSON: Is the father a doctor of law?

THE WITNESS: That I do not know. I don't think so because he was an industrialist. The son I am sure is a lawyer, practicing lawyer.

By MR. MCGRAW:

Q. Do you know whether any of the shareholders shown here for Agfa Photo, Limited, have any relations with I. G. Farben? A. No, except the Axe Trading Company where I told you already that I believe they had, of course, relations.

Q. Now, how about the shareholders listed under Chemdyes, Mr. Sturzenegger? Could you point out which of the shareholders have relations with your firm? A. Well, Grieshaber had relations.

Q. Is he a client of your firm? A. Oh, he is not that since many years. He was.

Q. Well, it isn't so many years, is it, Mr. Sturzenegger?

A. I think he died 1943 or so. During the war.

8689 Q. Well, was he a client of your bank prior to his death? A. He was—well, I'm not sure if he was a client. He was a personal friend of Mr. Greutert and was a member of the board of some companies. I think the Perpetua, for instance, and maybe the Rigidor.

Q. Wasn't he also a shareholder in Rigidor? A. He was.

Q. And didn't he also from 1931 to 1939 hold 60 percent of the stock of Perpetua for your firm? A. That may be.

Q. You don't know that? A. Well, I am not sure whether he held so much. He was, as I told you already, a member of the administrative board, and the stock, I think, didn't belong to him.

Q. But you know that he did hold stock in Perpetua for your firm? A. I'm not even certain if he did. He had, of course, to hold stock already as a member of the board, and I believe that the shares belonged to our firm, whether directly or by Mr. Grieshaber.

MR. MCGRAW: Will you read the last answer?

(The reporter read the answer of the witness.)

By MR. MCGRAW:

Q. Mr. Sturzenegger, I show you page 22 of the German

8690 text of the SCO report of November 1947. I ask you to read the passage there regarding Perpetua.

(The witness examined the document.) A. I have read it, Mr. McGraw.

Q. Does that refresh your recollection as to Grieshaber's shareholding in Perpetua? A. Yes. Not much. You see, there is only indicated original small share capital was signed in the fiduciary capacity for Ed. Greutert & Company.

in the amount of 60,000 by Grieshaber and 40,000 by Albert Maag. But that doesn't mean necessarily that they held for a certain time this capital for Greutert. It could have been just the act of signing for the firm Greutert & Company. And my recollection was that the whole of the capital belonged then to Greutert, which may be—

Q. Didn't they appear on the records of the Company as the shareholders even though Greutert was the beneficial owner of the shares? A. You mean these gentlemen?

Q. Yes. A. It depends whether they were nominal shares or bearer shares. I am not certain about that.

Q. Doesn't it say in the paragraph which they were? A. Well, it goes back to 1931 and my recollection is not clear without the document.

8691 Q. Doesn't it say there, Mr. Sturzenegger, from 1931 to 1939 he held 60 per cent of the stock in a fiduciary capacity for Greutert? A. No, not exactly, as I interpret this document.

Q. You do know that he was on the board of Perpetua? A. Yes, I mentioned that before.

Q. And he was on the board of Rigidor? A. Yes.

Q. And also a shareholder in Rigidor? A. Yes.

Q. Another company in the Chemie-Greutert complex which was listed on that chart we showed to you last February as Exhibit 18? A. That's right.

Q. Do you know a firm "Mithras"? A. Yes. It has been liquidated.

Q. What was the connection between Mithras and I. G. Chemie? Is that a subsidiary of Chemie? A. No. I think a part of the share capital of this Mithras Company was held by Greutert, if I am not mistaken, at least for a certain time. Grieshaber I am refreshed was on the administrative board.

Q. Was he also a shareholder of Mithras? A. I don't think so.

Q. You say Greutert and Cie held part of the share

8692 capital of Mithras? Do you know who held the other part? A. May be that I. G. Chemie held other shares. I am not clear about it in my memory.

MR. WILSON: A lot of the General Aniline stock was in Mithras' name at one time as I remember it.

THE WITNESS: Yes. 1,250,000.

By MR. MCGRAW:

Q. Was the stock of Mithras ever held in any of these Konsortium or Secretariate accounts? A. I do not believe it. Cannot exclude the possibility.

Q. You don't know whether at any time the stock was in Secretariat "A"? A. I do not recollect such a thing.

* * *

8727 By MR. JACOBY:

Q. Mr. Sturzenegger, I hand you the German text of the Second SCO Report, that one letter of November 1947, and I would like to read into the record a translation into English which was prepared in our office. Could you please follow— A. Yes.

Q. —and indicate to me whether you think that that is a fair translation? A. Yes.

Q. On page 46, the following statement occurs—

MR. WILSON: Is this page 46 of your translation?

MR. JACOBY: Page 46 both of the German as well as of our translation.

8728 MR. WILSON: Yes.

By MR. JACOBY:

Q. "Shareholdings of the I. G. Chemie and Greutert et Cie., Sturzenegger et Cie., at the Deutsche Laenderbank, (DLB)"—Mr. Sturzenegger, if you have any corrections, don't hesitate to interrupt right away. A. Yes.

Q. "Greutert et Cie had a block of 122,453 DLB shares in its portfolio as early as 1924. From June 30 to December

1924 Greutert et Cie. purchased in several blocks a further number of 447,000 shares from the Badische Anilinwerke in Ludwigshafen, the Heydkontor in Berlin, and the Ammoniakwerke in Merseburg, so that 569,453 shares were in the ownership of Greutert et Cie. at the beginning of 1925. All the purchases were made with paper marks, which means for a Swiss bank at a very cheap price computed in Swiss francs. At the beginning of 1925 the conversion into Reichmarks securities yielded a nominal value of 3,796,353. In 1930 Greutert et Cie. sold 2,500,000 Reichmarks shares to the Eidgenoessische Bank for a price of 3,198,400 Reichsmarks. Greutert et Cie. meanwhile had purchased and sold various such shares. For instance, Greutert purchased 4,979,000 Reichsmarks DLB shares, 25 per cent paid. At the end of 1936 they were fully paid. As of December 31, 1936, Greutert et Cie. owned Reichmarks 6,262,400 DLB shares.

Two million

8729 of them were sold to the I. G. Chemie in 1937. The number of such newly acquired shares was 99,400 shares net, so that Greutert et Cie. owned 4,363,800 Reichmarks DLB shares as of December 31, 1941. On the occasion of the formal increase of the DLB capital in 1942, Greutert received gratis shares of a value of nominal Reichsmarks 2,209,200, so that as of January 31, 1946, Greutert et Cie. had holdings of these shares in an amount of 6,573,000 Reichsmarks. The German foreign exchange regulations prevented Greutert et Cie. from bringing these shares into Switzerland. With regard to the I. G. Chemie's DLB shareholdings, this company acquired 2,000,000 Reichsmarks from Greutert and in consequence of the formal capital increase acquired a further 1,000,000 Reichsmarks in gratis shares, so that today the I. G. Chemie owns 3,000,000 Reichsmarks. The inquiries and investigations of the clearing office have disclosed that the holdings of Sturzenegger et Cie. as well as those of the I. G. Chemie are their free and uncontrolled property and that these shares are not encumbered with any right, right of repurchase, option right, etc. The previous efforts of Sturzenegger et Cie. and the I. G. Chemie to have

these shares also included in the compensation of 1936-37, unfortunately came to nothing since the foreign exchange control offices refused to extend these transactions to include shares."

Now, Mr. Sturzenegger, is that, generally speaking, a

8730 fair translation? A. I should say so.

Q. Do you generally agree with the contents of that statement by the SCO? By "generally" I mean: are the general propositions set forth in that statement correct? Of course, I realize that you will not be able to remember exact figures at this moment, but are you in agreement with the statements made there? A. Yes, I am.

Q. In other words,— A. Generally.

Q. Generally speaking, you are in agreement, and to be a little more specific, you agree with the SCO statement that the holdings, both of Sturzenegger and of Chemie, are free and uncontrolled holdings, property of Sturzenegger and Chemie; that it was the German foreign exchange regulations which prevented Greutert from bringing these shares into Switzerland, and that efforts to have the shares included in the compensation of 1936-1937 failed because the German foreign exchange office didn't permit an inclusion of shares into this compensation? A. Yes, according to my recollection.

Q. According to your recollection, you agree with the substance of those statements.

Now, I am going to hand you several documents, all submitted by you, which bear on the transaction mentioned by the

8731 SCO, namely, the transaction in 1937 by which 2,000,000 of the Laenderbank shares were sold by Greutert to I. G. Chemie in 1937.

Mr. Jacoby: I hand to the Reporter for marking Docu-

ment 24139, part 27 out of 30, which now gets exhibit-number 137.

MR. WILSON: Off the record.

(Discussion off the record.)

MR. JACOBY: I hand to the Reporter the original and an English translation for marking.

(The document and translation referred to were marked for identification Defendants' Exhibit 137-24139(30)-27.)

MR. JACOBY: I also hand to the Reporter for marking Document 24139, part 29 out of 30, which gets exhibit-number 138, the German and an English translation.

(The document and translation referred to were marked for identification Defendants' Exhibit 138-24139(30)-29.)

MR. WILSON: Off the record.

(Discussion off the record.)

By MR. JACOBY:

Q. Mr. Sturzenegger, from reading the material which you had since last Monday, does it come back to your mind that your attorney was asked by the Farben Control Office to submit original German documents? Isn't it true that your attorney's

8732 letter said that he had supplied English translations only and later on, when asked by the Farben Control Office, he also sent in photostats of these documents? A. I believe it was so.

MR. WILSON: Mr. Jacoby, I want to adhere to the arrangement that Mr. McGraw and I had, that I wouldn't be critical on the record of translations, because of the interest of time and of space. With one exception, I will try to adhere to that. In this No. 138, in the translation the German word "Wert" has been translated "par value" and I believe it is simply "value."

MR. JACOBY: I will change the translation. I fully agree with you. I will change the translation of Exhibit 138 and take out the word "par." Does that satisfy you?

MR. WILSON: Yes, thank you.

MR. JACOBY: I also hand to the Reporter for marking Document 24144, part 22 out of 27, which will be Exhibit No. 139, a German text and also a translation supplied by us.

(The document and translation referred to were marked for identification Defendants' Exhibit 139-24144(27)-22.)

MR. JACOBY: I also hand to the Reporter for marking Document 24144, part 24 out of 27 parts, which becomes Exhibit No. 140, again in a German text as well as an English translation.

8733 (The document and translation referred to were marked for identification Defendants' Exhibit 140-24144(27)-24.)

By MR. JACOBY:

Q. Mr. Sturzenegger, I also hand you the German text of Exhibit No. 140. Mr. Sturzenegger, could you please take a look at the last four exhibits, namely, 137, 138, 139, and 140, and after you have read them will you tell me whether these are documents as well as book entries dealing with the transfer of 2,000,000 Laenderbank shares in 1937 from Greutert to Chemie? A. Yes, they appear to be such documents.

Q. Mr. Sturzenegger, our Exhibit 139 is a book entry— A. I think it is this one, isn't it?

MR. WILSON: Off the record.

(Discussion off the record.)

THE WITNESS: 139, yes.

By MR. JACOBY:

Q. Our Exhibit No. 139 is a book entry of the journal of Greutert, and it credits, does it not, the Sekretariat with 2,397,600 francs? A. Yes, it does.

Q. In other words, Mr. Sturzenegger, in the transaction in which Greutert sold stock to Chemie, the credit was given to the Sekretariat; is that right?

8734 A. Yes.

Q. Was it given to Sekretariat because the stock before the transfer to Chemie had been held by Sekretariat? A. Yes, that is the reason.

Q. I think you have—In fact, I know you have—testified last February at some length about the nature of the Sekretariats on your books. A. Yes, I remember having done that.

Q. The Sekretariat is a bookkeeping device for holding certain shares, or keeping accounts, at Greutert, is it not? A. Yes.

Q. And you also said last February that the funds of Sekretariat at Greutert were largely funds which constituted a reservoir for Chemie. A. Partly and largely.

Q. Well, "principally" is the word you used last February. A. Yes.

Q. In other words, while on the books it appeared as a bookkeeping device for Greutert's holdings, the assets were largely or principally, as you said last February, Chemie assets? A. Well, not in a strictly legal, but in an economic sense.

Q. The 1937 transaction in other words, to use your
8735 own language, "in an economic sense," therefore, was a transfer from account which largely consisted of Chemie assets, to Chemie itself; is that right? A. Yes; it could be phrased like that.

* * *

8895 Mr. Schwartz: I would like to utilize the last few minutes to put in a few documents, Mr. Wilson, as to Norsk Staal, shares of which you held at a certain point. Will the reporter please mark No. 15046, in photostat and translation, No. 15122, also being photostat and translation, No. 17856, also in photostat and translation, 17944 in photostat and translation, also numbers 19428, 19449, 15170, and 12300, all in photostat and translation.

(The documents and translations referred to were marked for identification as Defendants' Exhibits 158-15406, 159-15122, 160-17856, 161-17944, 162-19428, 163-19449, 164-15170, and 165-12300 respectively.)

By Mr. Schwartz:

Q. I will pass these on to you, Mr. Sturzenegger. Let me detach the translations and give you only the photostats of the German text. A. (After examining documents) I have seen them, Mr. Schwartz.

Q. Let me put them in order so we are sure you have them all. Yes, you have them all. Will you keep them in that order, please. As to the four that were communications from the firm Sturzenegger or Greutert to Farben, do you recognize the signatures?

8896 A. Oh, yes.

Q. Yes: Just for the record, that was 158, 160, 162, and 165. Will you start with 159, please. A. Yes, I have it.

Q. That does not have written signatures, does it? A. No.

Q. You note that all of them are a chain of correspondence between you and Farben which consist of requests for holdings of securities by Farben for you, and they all show that between '39 and '42 Farben held for your account 72,080 shares of Norsk Staal, Oslo. A. Not 72,080 shares. I think that is the nominal value.

Q. That is the nominal kroner value, right. That conforms to your recollection the other day, does it not? A. Yes, yes.

Q. And does it help you to confirm in your recollection that Farben held such a block of stock for you? A. Certainly, after having read this.

Q. We have been unable to find statements showing this holding for you at any later date, and it is for that reason that we asked you whether you had sold them to Farben, and also because we had some direct indication that you had sold them to Farben. But just reading those alone, do they help you to remember that you sold the block to Farben after '42?

8897 A. Well, they only help me to remember that we did sell them. I am not sure who the counterpart was, whether I. G. Farben or another one, but I think they were sold later on. We do not have them any longer.

Q. I think I may be able to help you on the record with one more document.

MR. SCHWARTZ: Will the reporter please mark No. 19768, in three parts, all three parts of the photostat of the German text being stapled on one page, and three separate translations in addition.

(The document and translation referred to was marked for identification Defendants' Exhibit 166-19768.)

MR. SCHWARTZ: I show you a marked photostat of the German text.

MR. WILSON: You can pass that to Mr. Sturzenegger.

By MR. SCHWARTZ:

Q. I will give you just the German text, Mr. Sturzenegger. A. (After examining document) I have seen it, Mr. Schwartz.

Q. Will you note that the photostat in the upper left, marked "(3-1)" is a communication from Central Bookkeeping of Farben to the Central Tax Department, informing them that Farben has acquired certain shares of Behring,

8898 Budapest, September 1, '43, that the one in the upper right, marked "(3-2)" is a communication of the same day from Farben Central Bookkeeping to Central Tax, informing them that they have bought an additional nominal kroner value 72,080 of Norsk Staal, and that the third one is apparently the Central Tax Department's combination of both items, sent to the Revenue Office in Germany. Is that right? A. That is right.

Q. Does this help you to remember that you sold your nominal kroner value 72,080 of Norsk Staal to Farben? A. Well, I remember, as I told you, that we sold them, and

after having been refreshed I believe to remember that the matter was probably discussed once with Gierlichs. I have no independent recollection whether Farben or a third party was the ultimate interested party who definitely acquired it. I remember that we have disposed of the shares and sold them.

Q. Well, is it that you remember that you sold them to Farben but you don't know whether Farben bought them for their own account? A. Well, from these documents it appears that Farben has acquired them. I only have no independent recollection of it. I wouldn't dispute it.

Q. Well, aside from the documents, do you remember that you sold them to Farben at least in the first instance, aside from whether Farben passed them on to somebody else?

8899 A. No, I only remember that the same was, I believe discussed with Gierlichs, so I draw a conclusion that probably I. G. Farben acquired it, but when you asked me first I couldn't exclude the possibility that perhaps the company itself in Norway could have acquired it.

Q. But do you remember that you sold them to Farben? A. Well, I have no independent recollection.

Q. Do you remember that you sold them to Gierlichs who was acting for somebody? A. That I discussed the sale with Gierlichs.

Q. In what capacity was he when you were discussing it with him? A. Well, that I do not recollect neither.

Q. From your point of view, in what capacity was he? A. Well, he was, of course, one of the staff of I. G. Farben, but whether he was in this or the other respect—

Q. In respect to this sale, you weren't asking him advice as a friend whether you should sell this? A. No, I don't think so.

Q. He represented the purchaser, whoever the purchaser was? A. I think so.

Q. And did you understand that he was an agent or that

he was buying it for himself? A. Well, I do not recollect the circumstances of the
8900 sale, so really it would be speculating again.

Q. What did you discuss with him? A. I do not recollect the occasion. I have only the recollection that we, I think, wanted to get rid of this small holding, and maybe the price we could get, or counter-value, was discussed. I do not recollect all these details.

Q. Did you discuss with him your effort to realize what you had paid for it? A. I cannot remember such details.

Q. Well, surely you were trying to salvage as much as you could out of the investment, weren't you? A. Well, that is probable, but as I told you, I have no recollection of it.

Q. It does come to your mind, though, that price was one of the considerations that you discussed with him? A. I have a vague memory about it, that price was in question.

Q. Then do you also remember that you bought this stock with your own funds? A. No, I have no recollection whenever the stock was bought. I think it was long ago.

Q. I don't mean when the stock was bought. I mean that you bought it with your own money. A. I do not recollect that neither.

Q. Well, did you own this stock between '39 and '42 or
8901 were you holding it for someone else? A. That is just the question I put myself. I am not absolutely sure. It may be that—

Q. But you were— A. Pardon me?

Q. Go on. A. It may be that they belonged to Greutert or Grutchemie Konsortium.

Q. By "yourself" I have meant your firm. I haven't meant you individually, because all of these statments of deposit account were addressed to the firm, were they not? A. Sure.

Q. You think they might have been held for a Konsortium? A. I do not exclude the possibility. I really do not remember.

Q. Did your firm have any beneficial interest in this stock? A. That depends on for whom they were in fact held, which I do not remember. If they were held by us, amongst the own securities, then of course we would have had the beneficial interest. If they were held—which I do not recollect, as I stated, but it is possible, too—for Grutchemie Konsortium, then we would have had only a partial beneficial interest. And if it were held—and I do not exclude this possibility, though it seems to me improbable—
8902 for I.G. Chemie, then I G. Chemie would have had it.

Q. But that is pure speculation? A. That is pure speculation.

Q. You could speculate equally with respect to any Konsortium on your books. A. No, I do not think the others would be any question.

Q. You think it would be almost inconceivable that it was for the Grutchemie or Chemie? A. Well, it is speculating again. I have no recollection about the earlier times. I do not remember how it was.

Q. When you were trying to talk about price with Gierlichs, whose money were you trying to save, your firm's money, the Konsortium's money, or Chemie's money? A. Well, for the party interested, whatever party it was.

Q. But you don't remember whose money you were trying to get replaced? A. No. You will realize that it was not a very important holding from the point of view of an investment.

Q. You mean the amount was not large? A. Yes.

Q. Do you remember anything about why you bought this stock? A. No idea.

Q. Why you should have selected that amount of nominal
8903 value in a company called Norsk Staal? A. No, no recollection at all.

Q. You don't remember who sold it to you? A. No.

Q. Whether you got it from the company or from Farben? A. No recollection.

Q. Can you speculate as to why you should have invested in a Norsk Staal company, a Norwegian steel company? A. No, that is going too far. I have no idea.

Q. Will you note in the third part of this exhibit that Farben is saying that they have acquired an additional nominal kroner 72,080 of the stock of Norsk Staal. A. Yes.

Q. That suggests that Farben already held a certain amount. A. Yes, it suggests that.

Q. Does that help you to remember that you bought your segment from Farben? A. No, it doesn't help me at all.

Q. Or that you bought it at Farben's suggestion. A. No. no idea.

Q. Or that Farben really kept it with you as a nominee and that you didn't put up a penny of your own money or any of your other clients' money? A. No, it doesn't.

8904 Q. You don't remember anything about it? A. No, only I believe to remember that some counter-value was got when the shares were sold, so that it seems to be an indication that it was not held in the nominal quantity. That is just drawing a conclusion.

Q. Do you remember where that counter-value went after you got it? A. No, no, because as I told you, I don't remember the party interested: I suggested, and it was speculation.

Q. Do you remember, perhaps, that it went right back into Farben's moneys on deposit with you? A. No., I think that is to be excluded. That I would remember.

Q. Do you remember whether, when you bought this, the arrangement was that Farben would guarantee you that you would suffer no loss? A. No idea. I don't think so. I do not recollect.

Q. You have no recollection whatsoever as to the circumstances of the sale? A. No.

Q. As to whether you bought it with a dividend guarantee? A. Or with a contract that you could re-sell it to Farben at any time? A. No.

Q. With a contract that Farben could re-buy it from you?

8905 A. No, I do not recollect such a thing.

MR. WILSON: Mr. Schwartz, have you any information as to whether 901 shares equal the nominal Norse kroner? Oh, I answer myself.

MR. SCHWARTZ: I am not sure.

MR. WILSON: I answer myself. It is valued at 80 kroner and 80 times 901 would be 72,080.

MR. SCHWARTZ: So you agree that the 901 shares that Farben was keeping for the firm Greufert-Sturzenegger are identical in nominal par value to the amount bought by Farben?

MR. WILSON: Yes. I don't know whether they are the same shares, but—

MR. SCHWARTZ: The amounts equal each other.

MR. WILSON: Yes.

By MR. SCHWARTZ:

Q. Do you remember whether you had several conversations with Gierlichs or just one? A. I cannot remember that.

Q. Whether you had conversations with anybody else, anybody else other than Gierlichs, on this? A. Well, not to my recollection, but I am not sure about it.

Q. The other day when we asked you about the company you couldn't remember much or anything about what if did, I

8906 mean Norsk Staal. Has this attempt to remember helped you in any way? A. No; no, it doesn't help me.

Q. Except for the title, you don't even know the company has anything to do with the steel business? A. No, don't know.

Q. Did you know who were the other stockholders at any time during the time you held this stock? A. No, no.

Q. Never inquired? A. No. From this paper, from this

document, it appears I. G. Farben had the other, but it is not independent recollection.

Q. You are referring to 166? A. Yes.

Q. So you can't remember any time you held this block in Norsk Staal when you knew or inquired as to who the other stockholders were? A. No, I do not recollect such a thing.

Q. Or as to the nature of the business of the company? A. No, neither.

Q. Do you recognize the signature on parts 1 and 2 of this Exhibit No. 166? A. No, don't recognize them, Mr. Schwartz. It reads like Muench, but I don't recognize the signature.

8907 Q. Can you remember anything at all about Norsk Staal, your purchase of it, your disposition of it, its business, any of the incidents other than specific things I have asked you? A. Well, nothing comes up in my memory.

Q. You see, I am trying not to be limited by my questions as to specific things. A. No.

Q. Can you remember any fact about this entire holding acquisition, disposition, the nature of the company, the conversations, other than what I have asked you? A. No, I don't recollect.

* * *

8912 Q. You will note, gentlemen,—and I give you the document, Mr. Sturzenegger, and Mr. Wilson the translation—that this is another in the series of documents showing exchange of correspondence between Greutert and Farben on the deposit of Norsk Staal shares with Farben. I believe its date is the earliest in the entire series, and it brings the deposit of Norsk Staal shares with Farben back to at least some time in the year 1938.

I have just a few additional questions, Mr. Sturzenegger.

This deposit of Norsk Staal shares of your firm with Farben to your recollection was the only instance in which you kept shares on deposit with Farben?

8913 A. Well, I couldn't say that. There are no others which come up in my recollection just now, but it is possible that others were, too.

Q. It certainly wasn't a regular practice for you to keep your securities with Farben. A. No, that is right.

Q. And this is the only one you remember now? A. That's right, yes.

Q. Can you tell us why you kept it on deposit with Farben? A. No idea, because I do not remember the circumstances when they were acquired. It may be that it had some connection with such circumstances, but it is guessing.

Q. Do you recall whether you kept them on deposit because Farben had any rights in the shares at all? A. No, I do not recollect such a thing.

Q. That you had pledged them with Farben? A. I don't think so.

Q. I think you have told us that even when the pledge is made that there can be statements sent out showing that stock is deposited for the person who has made the pledge. Is that right? A. Well, I do not just get at the point you are thinking of.

Q. Haven't you told us in connection with statements

8914 showing the deposit of securities that such statements can be and are sent out in Europe even though the stock is pledged? A. Ah, as to the ownership?

Q. Yes. A. Oh, yes. It doesn't in my conception change the legal ownership of the shares, even if they are pledged.

Q. So when you in your firm had securities pledged with you, you would still send out to the person who had pledged them a statement showing his deposit of those shares with you? A. Yes, that's right; correct.

Q. And is it your understanding that Farben would do the same if it had securities pledged with it? A. I think that is the normal practice.

Q. Do you remember whether the securities were traded

in the market at all? A. No idea. At least, not in Switzerland. It was not known, this company, or not well known.

Q. Do you remember whether they had any market anywhere? A. No.

Q. Since we discussed this Monday morning, have you had any further recollections of anything involving this block of Norsk Staal shares? A. No, I haven't.

* * *

9021 By Mr. Jacoby:

Q. Now, the offices of the Laenderbank are in the same building as Zefi, are they not? A. Yes, they are.

Q. And you in the early years worked there for a certain time? A. I have been there, yes.

Q. Didn't you work there before you entered the firm of Greutert? Yes, I was there several months.

Q. When was that? A. That was beginning of the year 1930. And I remained there until the middle of the year. No, 1931 I believe. And I remained there until I believe July or something like that 1931.

Q. Now, the offices of Laenderbank remained in the same building as the offices of Zefi in later years, did they not? A. Oh, yes, certainly.

Q. According to your information? A. Until the end of the hostilities.

* * *

9038 Q. Let's add that to my question. Now that you have looked at the exhibit, No. 185, which as you will note is a publication of 1927, do you now remember whether Laenderbank

9039 was described in any financial publication on I. G. Farben in the fashion indicated in this particular document?

Mr. Wilson: At any time, or in the year 1927?

By Mr. Jacoby:

Q. At any time. A. No. I do not recollect that. I recollect that maybe in some papers which I do not remember at all,

and I do not remember the period, sometimes Laenderbank was called House Bank of I. G. Farben. That I do recollect.

Q. What do you mean by "papers"? A. I mean printed matters.

Q. You mean printed matters such as financial newspapers? A. Something like that, or even normal newspapers.

Q. Normal newspapers? A. Well, it is just my vague impression from a vague recollection. I cannot remember specific things.

Q. Do you remember whether at any time your firm objected to such newspaper publications? A. I don't recollect such a thing.

Q. Do you know whether you ever sent a denial to a newspaper correcting something which you considered was wrong? A. No, I don't think we saw any reason to do it on our part.

MR. JACOBY: I hand to the reporter for marking our
9040 Document 421 which now gets the exhibit number 186, original and English translation.

(The document and translation referred to were marked for identification Defendants' Exhibit 186-421.)

By MR. JACOBY:

Q. Mr. Sturzenegger, I hand you Exhibit No. 186. Before you read it, of course you can identify the signature, can't you? A. Well, it is the signature of Mr. Greutert.

Q. And I would like you to read the whole letter, but I would like to call your particular attention to a statement occurring in the first paragraph of page 5 of the German letter. It is page 4 on the translation, Mr. Wilson.

MR. WILSON: Mr. Jacoby, for my own edification and enlightenment, we had this document with respect to another witness, didn't we?

MR. JACOBY: We had that document with respect to two other witnesses.

MR. WILSON: Messrs. Euler and Merton?

MR. JACOBY: Correct.

MR. WILSON: Some reference to Laenderbank being the house bank of Farben. Is this the letter?

MR. JACOBY: Yes.

MR. WILSON: Where are you? Page 4?

9041 MR. JACOBY: Page 4 of the translation. That is page 5 of the original.

By M. JACOBY:

Q. I would like you to read quickly the whole letter, please. A. (After examining document) I have read it.

Q. I would like to read one sentence of that letter into the record, namely the sentence in which Mr. Greutert says as follows on page 5 of the original:

"For your information we point out that the Heydtkontor is the private bank of the numerous Ludwigshafen gentlemen, that the Laenderbank is the house bank of the Farbenindustrie, A.G., and that both banks probably have been among the biggest money lenders of Berlin for the last six months. Manager of the Heydtkontor and Directors of the Laenderbank are Drs. Brueckner, Huelsmann, and Boedecker of the Badische, all of them men who enjoy complete confidence."

Now, Mr. Sturzenegger, after you have read the whole letter, you, of course, understand the purpose of Mr. Greutert's letter to Mr. Euler. A. Well, to some extent.

Q. Isn't it right that Mr. Greutert was, in that letter, trying to answer fears which Mr. Euler had expressed and wanted to pacify Mr. Euler's mind as to the obligations which the firm Greutert may have incurred?

9042 A. Well, according to the content of this letter, that seems to be obvious, that that was an intention of this letter.

Q. Mr. Sturzenegger, I assume that you have read the deposition of Mr. Euler which was taken in 1949, I think. A. Yes. At least I had a look at it.

MR. WILSON: '48, wasn't it? '48, yes.

By Mr. Jacoby:

Q. And the general tenor of one part of the deposition was, was it not, that Mr. Euler was getting worried about the obligations? A. Yes.

Q. Which Mr. Greutert incurred and which Mr. Euler felt were not in proper bookkeeping form. A. Yes. That I remember from those transcripts.

Q. Now, this Exhibit No. 186 is an example of that view of Mr. Euler, is it not, and Mr. Greutert's attempt to answer? A. Yes, it is obvious, all from the content of this letter.

Q. Now that you have read the letter, will you please take a look at the chart which you submitted to the Farben Control Office, Exhibit No. 134. Will you please take a look at the chart. A. Yes (examining document).

Q. I call your special attention to the date of

9043 Mr. Greutert's letter which was May 1926, was it not? A. Yes, May 1926; that's right.

Q. Now, will you please take a look at the chart you submitted and note what block of Laenderbank shares, according to the chart, the firm Greutert owned at that time, May 1926. A. Well—

Q. Maybe we can simplify it. A. Yes.

Q. Isn't it correct that according to the chart the firm Greutert at that time owned over 4 million fully paid and a block of 1,400,000 partly paid? Isn't that right? A. Well, that would be the figure according to this chart of the acquisitions made up to such date.

Q. And there were no sales up to that date because the sales, as you will note if you go down a little below, took place at a later time. A. No, there do not appear to have been any sales.

Q. Now, at that time, in other words, in May 1926, according to your chart Greutert owned over 50 per cent of the Laenderbank; is that right? A. Well, at least acquired so much. Q. Well, do you mean to say they didn't own it for themselves? A. No, I just remember another letter you have

shown me during one of the last depositions wherefrom it could be

9044 deducted—it appeared according to a letter again of Mr. Greutert—that some of the acquisitions or the book entries reflecting some of the acquisitions did, perhaps, at that time not represent full ownership of Greutert & Co. Therefore, I feel inclined, after having recollected this letter you showed to me, to make this reservation.

Q. So you—excuse me. A. Well, I would just like to refer, I think, again to this accompanying letter, the letter to the I. G. Farben Control Office, the letter by Dr. Gubler, where reference was made to this early period without going more into details. And I think that was made because really it was a very early time where we didn't feel absolutely certain about the whole situation. And in addition, we didn't think it necessary to go more into the details as at the later date the whole matter, we thought, was entirely clear.

* * *

9081 By Mr. Schwartz: . . .

Q. Then is it your view that the SCO is absolutely correct that in 1929 the stock of Osmon went from Farben through Greutert to Chemie? A. Well, I cannot remember the transaction.

Q. Of course not. A. I am not absolutely sure, but I believe it's correct.

Q. You believe then that Osmon has been owned absolutely since shortly after June 1929 by I. G. Chemie? A. I believe so, yes, but I'm not sure.

Q. The year 1937 suggested itself as a dividing point because so many things seemed to have happened in 1937. For instance, Mr. Schmitz left the presidency of Osmon in 1937 and there was a new issue of stock in Osmon in 1937 and Mr. Schudel got on the board in 1937. And there was a reorganization of the Parta French business in 1937.

Do you remember a coincidence of fairly large numbers of events in or about 1937 that affected Osmon? A. Yes, I

didn't remember that these incidents mentioned by you all took place at this period. I think it's more or less just coincidental.

Q. You were, of course, fairly active with Osmon in
9082 1937. Do you think then that Mr. Schmitz leaving the presidency was just a coincidence or that there was no particular reason for it? A. I do not remember any reason. I couldn't say that I was very active as you have told me before. I was empowered to sign as a Handelsbevollmachtigter. I had to do with the matter in different respects but—

Q. (Interposing) I think you were exceedingly active in Osmon. You handled their stock transfers. You received their dividends. Your firm was also the banker for Osmon. A. Yes.

Q. Simultaneously. You transferred their stock; you signed their proxies. A. Well, these are more I think technical—I mean to say my function was, as I recall it, more in the field of the technical handling of different matters.

Q. Well, you were engaged in a very important controversy by letter with Bayer over the return Osmon was getting on its investment in Chimicom, France. A. Well, I think most of this done by Mr. Roesch, but—

Q. (Interposing) You signed with him? A. I signed with him.

Q. The letters on this problem? A. Yes.

9083 Q. Well, I'm sure you must have understood something of the significance of Mr. Schmitz's leaving the presidency. A. No, I do not recall the reasons.

Q. He didn't leave the presidency of Chemie, for instance, until the cancellation of the formal dividend guarantee. A. That's right.

Q. Between Chemie and Farben. A. That's right.

Q. Wasn't there some major reason why he left the presidency of Osmon in 1937? A. Well, I couldn't remember one.

Q. Well, could it have been connected with the increase

in capital? Was that capital going to be used for something special? A. No, I wouldn't say that.

Q. Wasn't it perhaps because at that point, 1937, Osmon was engaging itself with Bayer in Farben Leverkusen to be more of a strawman for Farben with respect to the French company? A. No, that's not my recollection, and if I'm not wrong—but please correct my memory on this business in Paris—that was from the beginning a joint enterprise with the brethren Josefowitz. I think that was started before 1937.

9084 Q. Oh, yes, it was started in 1934, but I was suggesting to you that in 1937 Osmon engaged itself—agreed with Farben Leverkusen—that henceforth Parta would be more of a front, of a trustee, if you like, for Farben than it had been before. A. Well, that is my recollection. Only to safeguard better the capital investment made before by Osmon. I am not sure. May be that the capital increase coincided temporarily with the acquisition of the Josefowitzes' part in the Paris business.

Q. You're right. Another event in that year was that the Josefowitzes itself were bought out. A. Only I believe that occurred a little before.

Q. Perhaps. I am not sure of the months. But in 1937 all those things happened. The Josefowitzes were bought out of their investment in the French company and Parta became the sole owner. Mr. Schudel went on the board, and Mr. Schmitz went off. Mr. Greutert I think became president. Osmon issued new stock. All those things coincided, perhaps a month here, there or sidewise. But they all happened in 1937.

I was wondering whether Mr. Schmitz's departure from the board wasn't connected with the new agreement also at that time that Parta should be more of a trustee for Bayer than it had been before.

9085 A. No, not to my recollection.

Q. You remember that agreement in 1937? A. Well, rather vaguely. I remember there were different phases in this whole matter.

Q. Incidentally, you mentioned that the Josefowitzes and Parta were the partners in this French business. Wasn't it rather that Parta and Farben were the partners and that the money was put up by Farben through the Josefowitzes? A. Well, not to my recollection. I was always convinced that it was investment of the Josefowitzes. Of course I didn't care and had not to occupy myself how they procured the money. I understood they were rich people.

Q. Well, after they left didn't you and Farben exchange letters in which Farben said that their investment equalled yours; that you both had invested five or six million Swiss francs in the French business? A. Oh, not five or six million Swiss francs.

Q. French francs I meant to say if I didn't. Wasn't that an outspoken, plain understanding between you and Bayer Leverkusen that you had invested an equal sum of money with Farben in this French business? A. No, it's my recollection that it was a business started together with the—I mean Basle on one side and together with the brethren Josefowitz both having a 50-50 investment in this company.

9086 Q. That is perfectly true as to the formalities. Parta and the Josefowitzes seemed to have owned 50 per cent of the stock in Chimicom each from 1934 to 1937. But I am suggesting to you after they were bought out it was frankly understood and stated between you and Farben that it was you and Farben who were partners in this French business to the amount of about five or six million French francs each? A. No, that is not my recollection, because I think that the payout of the Josefowitzes which was handled in my recollection on a very fair and favorable basis for the Josefowitz participants came—that this money came entirely from Parta.

Q. Well, hadn't Farben put up other moneys in the sense of money that Chimicom would spend advertising its products? A. Well, that is another thing. I think that Farben—well, I'm not sure about all these details—had at sometime

made advances or spent money to Chimicom for advertising purposes, and other advances for the development of the business of Chimicom were made too by Parta from the Basle group.

Q. Well, then, you remember then that aside from the ownership and formalities in an economic sense, once the Josefowitzes left, Parta and Farben were partners. Parta put the capitalization up, which was spent for whatever it should
9087 have been, and Farben put up money that Chimicom spent on advertising?

MR. WILSON: I object to that question. I think it's an improper question. I don't know why it should be characterized as "partners."

MR. SCHWARTZ: I will be glad to withdraw the word "partners."

By MR. SCHWARTZ:

Q. Do you remember, Mr. Sturzenegger, that once the Josefowitzes left and aside from the formalities that the French business was financed or had been financed from two sources? Parta put up its capital and Farben put up moneys that the French business spent for advertising? A. Well, in some way, but it's correct, as I have stated before, that the Bayer made some advances for these advertising purposes too, but the whole capital investment, original and the additional by the buying out of the Josefowitz group, was made according to my recollection entirely from means of the Basle purchaser.

Q. Then you have agreed with it. You wanted to emphasize the buying out of the Josefowitzes, but I was trying to put that aside. A. I made the same remark that I wouldn't in my opinion consider that as a partnership.

Q. I withdrew "partnership."

9088 MR. SCHWARTZ: Read the question.

(The reporter read the question commencing at line 9 on page 2647 [R. 9087] of the transcript.)

By Mr. Schwartz:

Q. I take it you do remember that. A. Yes.

Q. And you remember too that roughly the amounts that came from Farben and the amounts that came from your side in Basle were equal—each about five to six million French francs? A. Well, that I do not remember. I remember—well, vaguely—the amount of the Basle side being I think along the lines you mentioned. I am not sure about the other. I don't know that.

Q. But you remember that they were roughly equal? A. Not even that. I cannot say that.

Q. Or the Farben one was very substantial as compared with yours? That it was at least half of yours? Or three-quarters? A. I have no idea about that and therefore I couldn't make a statement, Mr. Schwartz.

Q. Then all you can remember is that Farben put up moneys that Chimicom spent on advertising? A. I think that's correct.

Q. And, of course, Chimicom was a sales company
9089 for

Farben's products produced in Leverkusen plant? A. Well, I'm not sure if that's not a little bit one sided to state, but I think they manufactured own pharmaceutical products.

Q. You're right. They sold both Farben's Bayer products and they manufactured products with licenses and patents and technical information that Farben supplied. A. Yes. May be the Josefowitzes too supplied that. I don't know. But I understood the Josefowitzes were too acquainted with the Chimicom industry.

Q. But you do know Farben products were sold by Chimicom? A. That was my understanding.

Q. Whether imported directly or manufactured in France under contracts with Farben? A. Well, I believe that's right.

Q. Now, the SCO tells us, Mr. Sturzenegger, that the French company was founded in 1934. The words them-

selves are on page 17 of the first SCO expose. Will you take both of them? I may have occasion to quote them both. Would you prefer the German? A. Perhaps I am more of course acquainted with the German. It's easier to find the phrases.

Q. Here is the German of November 1947. A. No, that's the French. Oh, I see. No, no. You're

9090 right. Only there is a letter in French on the top.

Q. The text I think is in German. A. Yes.

Q. And here is the German of September 1947. I would like to quote to you something from here, and it's page 17 of the German text. A. Where are the pages indicated?

Q. On top. A. I see. Excuse me. I see.

Q. Do you have the language beginning: "In 1934 Parta A. G., Lausanne"? A. No, I don't see that has anything to do with Parta.

Q. You're probably right, but that is the November one and I meant the September. A. I see.

Q. Now, that first sentence says, doesn't it, that the Parta, Lausanne, in the interest of Farben, in order to introduce Bayer products, took up a participation in a French company in 1934? A. Yes.

Q. Is that right? A. Yes.

Q. Was the investment in France in the interests of Farben in order to introduce Bayer products? You have told

9091 us that it was to make a good investment. A. Sure. I think that in so far the statment of the SCO is right as the initiative for this business, at least to my recollection, came from I. G. Farben.

Q. And the purpose of the French company was, of course, to introduce Bayer products, so it's right to that extent too? A. Well, but as I said it before, I believe they manufactured also themselves products. May be under a license agreement with I. G. Farben on that.

Q. Yes. And that activity they were to engage in was

certainly in the interests of Farben so the statement is right to that extent too? A. Yes, but it was in the interest of I. G. Chemie, of course, too. Otherwise they wouldn't have made it.

Q. But the interest of I. G. Chemie through its subsidiary Parta was, as far as you can see, only to make a good investment? A. That's right.

Q. Well, wasn't it understood very clearly at the time and always thereafter that it was not a good investment? A. It turned out to be not a good investment.

* * *

9108 Q. Now, this is a letter from Bayer to Parta saying what I suggested to you. A. I see.

Q. That what with the war coming on, "we, Bayer, can't protect you, Parta, and your interest in Chimicom, and we request to you that you kindly have Societe Commerciale et Chimique, which is Chimicom, report to you in the future in the way made use of hitherto, and we leave it to your discretion to keep us informed as you think best."

Now, this is such a letter on the eve of war. A. Yes.

Q. Does this help you to remember that you were told on the eve of war to correspond with Chimicom directly? A. No. No, it doesn't help me at all.

9109 Q. Do you remember another change in this three-cornered relationship immediately after the French-German hostilities were over? A. Were—?

Q. Were over? Let's say in the summer of 1940. A. Well, I have a very vague recollection that there was a change in this period.

Q. I mean immediately after the fall of France. A. Sometime in 1940 I believe.

Q. Could you help us with that recollection, please? A. No. Well, I'm not sure about it, but I believe this arrangement of 1937 was in some way cancelled or modified.

Q. The arrangement in 1937? A. Yes, the arrangement

referred to in this document, the letter you have referred me to.

9110

Q. In this No. 194-22899? A. Yes.

Q. And you mean the arrangement that Parta was to be only a fiduciary?

MR. WILSON: I thought you were—I beg your pardon. Go ahead.

THE WITNESS: Yes, I think that, but—

By MR. SCHWARTZ:

Q. (Interposing) You think there was some change? A. Some change, I believe to remember.

Q. Parta became not only a fiduciary. A. I didn't occupy myself much with these matters, so I have only very vague recollection about it.

Q. Well, I would like very much if you would help us with that vague recollection. Do you think there was a change in the agreement that Parta was to be only a fiduciary? A. Yes. I mean I believe to remember that the change was such that this fiduciary role was probably not continued later on, or not to this extent. I don't know the details, but it was something like that.

Q. And this change took place in about '40, after the fall of France? A. There was a contract change and I think it may have

9111 referred to such a thing.

Q. But I am referring to the time. Do you think this change took place in '40? A. '40 or '41, I believe.

Q. Let's assume then for the moment that this fiduciary role existed only between '37 and '41, or '40, as you like. What were the characteristics of this fiduciary relationship while they existed? A. That I couldn't recollect, Mr. Schwartz. That must be seen clearly from the exchange of correspondence.

Q. Well, you agreed in '37 that Parta should be only a

fiduciary; right? A. Well, this letter you showed me seems to indicate that.

Q. Yes. And I think you have said so otherwise. A. Well, I was not sure if it is. I try to make it clear what was left beyond that. At least this investment participation side was, of course, not—

Q. (Interposing) Parta agreed to be a fiduciary and Parta continued to hold its investment, but in what respect was it a fiduciary or go-between? A. Well, I am not sure about it.

Q. Wasn't it, Mr. Sturzenegger, that Parta was content to have Farben operate the Chimicom business without any interference or participation in the management?

9112 A. Something like that.

Q. Yes. A. Because Parta was always only interested, as I understood it, from the financial point of view, and Parta—I mean by that Basel Group and Osmon—they had not the technical knowledge necessary for the management of such a company as the Paris company was.

Q. They were financial people purely and simply? A. Well, more or less; at least not specialists in the chemical field.

Q. And so their fiduciary capacity was that they allowed Farben to operate the Paris business in the technical matters? A. Well, I am not sure whether you can reduce it just to that, but as I understood the whole business, it was an investment from the Basel company.

Q. You can't have it both ways, Mr. Sturzenegger. You say it was only an investment and they were not at all interested in the technical management? A. Not in the management; that's right.

Q. And Farben operated the thing technically? A. Well, I think it was operated by French scientists, too, but Farben no doubt delivered the patents, gave licenses, and probably know-how and such things.

Q. But Farben operated it as completely as Farben desired. There was nobody in Paris who could or did tell Farben

9113 "No," when Farben said, "Yes."

MR. WILSON: Now, do you know the answer to that?

THE WITNESS: I do not know that. I do not know because I do not know the details.

By MR. SCHWARTZ:

Q. Did you understand that Farben in its dealings with the Paris people was in charge or was just an equal? What did you think, Mr. Sturzenegger?

MR. WILSON: I object to that.

By MR. SCHWARTZ:

Q. Will you be frank with us as to what you thought during this period? A. During what period?

Q. This period between '37 and '40 or '41, as to whether Farben and the Paris people were equals or Farben was in charge of the Paris people. A. Well they were, of course, in my opinion, as to the financial strength not equal, but I do not exclude that there were French people, scientists, other people, who would have had a very considerable influence in the business, and maybe they handled it just as they thought it best, because they must have the local knowledge and the knowledge of the French business. I think it was just a combination.

Q. That may be as you say, but did you understand during this period we are talking of that the Farben people

9114 were equal in influence with the French people, or they were superior? A. Well, I didn't think about these things.

Q. You had no idea during this whole period whether your subordinates in Paris were on an equal level with Farben or were inferior to Farben? A. Well, I have never been in Paris to discuss such matters, I do not know these people.

Q. You don't have to go to Paris to have an idea about

what goes on there, Mr. Sturzenegger. A. As I told you before, I was and am under the impression that the whole business was started on the initiative of I. G. Farben. That already indicates or seems to indicate that Farben, of course, probably had a great influence. But I do not know how far that went.

Q. And you can't bring yourself to say that you understood that Farben was equal to the Paris people or superior to the Paris people?

MR. WILSON: Lest my objection may have been forgotten, I want to repeat it to this whole line of inquiry about what the witness thought or understood or concluded about a fact that he is not conversant with.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. You can't bring yourself to say, Mr. Sturzenegger,

9115 whether you thought during this period '37 to '40 or '41 that the Farben people were equal to the Paris people or superior to the Paris people? A. Well, I told you already.

Q. Will you tell me either equal or superior? Can you tell me that? A. Well, the Paris company was a small company, and the Paris company probably depended as to the products from I. G. Farben, and considering the differences already in size of the corporations, that all seems to indicate, but it is not my knowledge, that—

Q. (Interposing) You had no thoughts during this period as to whether Farben was equal to the Paris people or superior? A. No; the thoughts didn't enter my mind.

Q. Then how was Parta a fiduciary for Farben if not that it undertook that its people in Paris would be inferior to the Farben people in the direction of the business? A. There are possibilities of a fiduciaryship in such a triangle business, no doubt.

Q. Well, tell us what they were. I have been trying to get you to tell us. A. Well, as I told you, my recollection is too vague, but it may be—I am not sure about it, Mr. Schwartz—that Farben transferred to Parta certain of the products in question, or rights and titles to such things to Parta in the

9116 fiduciary capacity. That would be just one of the possibilities.

Q. That would be one of the possibilities. But you don't remember? I may be able to help you with it later, but you don't remember? A. I vaguely recollect that something along these lines happened. I am not sure whether it really reflects the facts as they were.

Q. Any other respects that Parta was only a fiduciary? A. Well, for instance, if technical advices would have been given through Parta.

Q. You say they were, or if they were? A. If they were, that would be another possibility.

Q. I am asking ones that you remember, not possibilities.

MR. WILSON: I don't think he is remembering these. I think he is volunteering different ideas.

By MR. SCHWARTZ:

Q. Tell us—

MR. WILSON: I object to it on the ground that you have information that you can show him to help him answer these questions, and I specifically again call your attention to a document which I vaguely remember to be numbered 8572 or 8576, which discusses this very point.

By MR. SCHWARTZ:

Q. All right, do you remember any other respects in which Parta was only a fiduciary?

9117 A. Not for the moment. It may have been there have been other fiduciary capacities.

Q. Have you thought perhaps further of what the changes

in this relationship were in '40 or '41 that you vaguely remembered might have taken place in one or another of those years? A. I didn't get your question.

Q. Beg pardon? A. I didn't get the question. Maybe it could be read.

(The pending question was read by the reporter.)

THE WITNESS: No, I can't remember without having been refreshed through the documents.

MR. SCHWARTZ: I'll try.

MR. WILSON: Can we have a five-minute recess?

MR. SCHWARTZ: Yes.

(Whereupon, a short recess was taken.)

MR. SCHWARTZ: Will the reporter please mark Document 14271, original and translation.

(The document and translation referred to were marked for identification Defendant's Exhibit 196-14271.)

By MR. SCHWARTZ:

Q. Will you please look at this, which has been marked No. 196. A. (After examining document) I have seen it, Mr.

9118 Schwartz.

Q. Can you identify the initialled signature below? A. No.

MR. WILSON: May I see that a minute, please.

THE WITNESS: Yes (handing document to Mr. Wilson).

By MR. SCHWARTZ:

Q. Do you recognize it as the initials of Mr. Schmitz of Bayer Leverkusen?

MR. SCHWARTZ: Please return it to him, Mr. Wilson.

MR. WILSON: I will, Mr. Schwartz, as soon as I get through with it. Here it is (handing document to witness).

THE WITNESS: No, I couldn't recognize it, Mr. Schwartz.

By Mr. Schwartz:

Q. You will note that it is dated October 12, 1940 and it is captioned— it is not a letter, but it is captioned as "Societe Commerciale & Chimique, Paris," which means Chimicom, and "Laboratoires Efficia, Paris," which is the operating subsidiary of Chimicom, and it refers to personal discussions between Consul General Mann who was in charge of Bayer—I see you are nodding your head—and Director Roesch. It says:

"It was decided that Parta shall itself exercise the rights and duties which arise from its ownership relations with the above-mentioned firm."

Then it goes on to say, "Our agreements are to be outdated" or "outmoded," and so on and so on.

9119 Is this the kind of change that you thought occurred in the relationship between Parta and Bayer in 1940 or 1941? A. I thought of such a thing, only my recollection was vague, but that seems to refer to this exchange I had in mind.

Q. And am I right that it mentions a change from only a fiduciary or go-between, as in your letter in '37, to show an independent exercise of rights and duties and ownership obligations by Parta? A. Yes, something like that. I remember, after having seen this, that in '37 or not much later on a kind of contract, a letter exchange, between Parta and the Paris corporation was made, and I think that the fiduciary capacity of—

Q. Now, you are talking of what year? '37 or thereabouts? A. '37, '37, and that was, the fiduciary capacity of Parta in this matter was reflected in those agreements by Bayer. And now that here seems to refer that such previous arrangements were to be regarded as void for the further period.

Q. But you remember, I gather, independently now that there was such an agreement in '37. Do you also remember

independently that on October 12, 1940—A. I do not remember, of course, the details.

Q. Well, there were very few details there. A. Well, I remember, too, after having seen this last paragraph, that there were discussions about participation and

9120 percentages of the turnover, or so.

Q. As the basis for compensating Parta? A. Yes.

Q. Yes. But I would like to stay away from that aspect of the thing for a moment and stick to the change in the relationship. So I take it you remember, you have been refreshed by this document, that about this time the '37 agreement for Parta being solely a fiduciary became outmoded and Parta thenceforth was to be the owner in its own right? A. Well, approximately so I have it in mind.

Q. Yes, all right. And this new relationship continued for the remainder of the period that we are interested in, until Parta was sold; is that right? A. I believe so. I do not recollect that new agreements were made.

Q. Now, aside from Parta no longer holding certain patents or contracts or pharmaceutical preparations as trustee, how did this period after '40 differ from the period between '37 and '40? A. Apart from that?

Q. Yes. A. Well, I couldn't say that. I think that there were also afterwards always these troubles that this business didn't pay much, and that, of course, as a reflection of the depreciation of the French money, the situation grew worse and worse.

9121 Q. But aside from that. I am talking of the basic relationship. You have told us, or we have shown, or both, that between '37 and '40 Parta was solely a trustee. In '40 that was abandoned, and it became the owner in its own right. Now, aside from the abandonment of a trusteeship for certain patents and technical preparations, how did this new character of Parta manifest itself? A. Well, according to my recollection, there is not much difference. I couldn't, at last—

Q. (Interposing) I think you are right. For instance, Parta or Osmon didn't take more of an interest in the technical management of the Paris business. A. I don't think so.

Q. And it didn't vote its stock in any different manner than it had before. A. Well, that I am not sure about, how it was handled. I didn't care myself. I wasn't occupied with these matters.

Q. You don't remember that after '40 or '41 Parta voted its stock in Chimicom? A. I do not know that.

Q. You don't know that it voted its stock? A. No, I don't know that.

* * *

9453 THE MASTER: Do you remember the total stock issuance of Norsk Staal?

THE WITNESS: No, neither.

THE MASTER: What proportion the amount of stock was of the total?

THE WITNESS: I have read it again in those documents. I think that is only a relatively small portion, I think 16 per cent or something like that. I am not sure.

By MR. SCHWARTZ:

Q. Do you remember, for instance, this statement of Farben's that the 225,000 all told was held by the German group, aside from you? A. I have seen something like that.

Q. Those facts are in the documents. I perhaps did not ask the specific facts. It might be unlikely that you would remember those. A. As to the sale I am still not sure whether it was a direct sale to I. G. Farben. I had more in mind a sale to some Norwegian company, Norsk Staal itself. But it is apparent from those documents that afterwards Farben reports that Farben has the stock.

Q. Well, certainly the document speaks for itself. Farben reports that it has bought the stock from you. A. Yes.

9454 Q. But you are still a little vague as to whether you sold it to Farben? A. Yes. Sold it; that I am pretty sure of.

Q. Do you remember a matter of a man named Gaus who was the registered owner of one of these shares? A. No. I remember the name of this man.

Q. And he was apparently the registered owner of one of the shares which you had bought from Farben? A. I remember quite well the name. He was one of the well-known Farben men previously, and I think he was once a client, too, of our firm.

Q. Of your firm? A. Yes. I mean the Greutert firm, the predecessor. I do not remember the name in connection with this Norsk Staal business at all.

Q. And the documents about that one share, the 901st share in his name, didn't refresh you at all? A. Not at all.

Q. Did they help you to remember that the other shares were registered in Farben's name, the other 900? A. No.

Q. That was rather— A. It was stated here. I remember having seen that.

Q. That was a rather unusual transaction from a business point of view in that sense: the shares were registered in

9455 Farben's name; they were on deposit with Farben; and Farben had full control over them; did it not? A. Yes, it is unusual.

Q. It must have been. Can you tell us anything of why that should have happened so unusually? A. No. Again I must say it goes back to—I mean the acquisition of those shares—it apparently goes back to the time before I entered the Greutert firm, and before, even, I think, I. G. Chemie took the shares over.

Q. But certainly for many years during your tenure in the firm the shares continued to be kept by Farben and each year you would ask Farben for or you would get from Farben, "We hold for you 901 shares." A. Sure, but it was apparently just a technical business, this yearly statement of account.

Q. That is the customary business way to show that the shares were on deposit with Farben for you? A. Sure.

Q. So I am making the point that during your tenure they continued to be on deposit. A. Sure.

Q. You don't remember that you ever asked Farben to give them to you? A. I do not remember.

Q. The documents, of course, seem to show that you did

9456 not ask Farben. A. Yes. Well, at least there is nothing—

Q. These documents. A. Yes.

Q. Now, in one of them we have a memorandum signed by Mr. Gierlichs. Do you remember his statement in a memorandum for the files, attention Securities Administration, to the effect, roughly, that, "On June 19, 1943 the Berlin Devisenstelle authorized us to take over these 901 Norsk Staal shares from Sturzenegger in the course of an extensive settlement of accounts by clearing, the money to be paid in Germany in Reichsmarks to a creditor of the Sturzenegger firm."

Do you remember that?

MR. WILSON: When was that?

MR. SCHWARTZ: That is June 1943, 25035.

THE WITNESS: I believe I have seen such a document.

MR. SCHWARTZ: I will give that to you in a moment. It may very well be, Mr. Wilson, that the German is out being photostated for you.

MR. WILSON: I make all due apologies for the record.

MR. SCHWARTZ: That is perfectly all right. I just want to apologize for my not having the German. Let's assume the translation is a fair one until we have the photostat back, Mr. Sturzenegger.

THE WITNESS: What is it? Is it an internal memorandum?

9457 By MR. SCHWARTZ:

Q. It is a memorandum by Mr. Gierlichs entitled "File Memorandum, Attention: Securities Administration," and then he says: "In a letter of June 19, 1943, the

Berlin Devisenstelle authorized us among other things, in the course of an extensive settlement of accounts by clearing, to take over 901 Norsk Staal shares, nominal value 72,080, from the banking house of Sturzenegger." A. Yes.

Q. "This amount is to be paid in Germany in Reichsmarks to a creditor of the Sturzenegger firm." A. Yes.

Q. Does that help you to remember some settlement or compensation or clearing between you and Farben in 1943?

A. No. When I saw this document I asked myself, and I believe it is connected with something else, but it doesn't come to my mind what it was.

Q. It doesn't help you? A. It doesn't help me. Well, it helps me in so far as I have a vague recollection that this sale as considered from our side was connected with some other transaction, but I do not remember now what the other transaction, the combination which was involved, was.

Q. We asked you the other day about a possible compensation involving Parta and Chimicom and you could remember a

9458 compensation involving Deka, but that was a single firm transaction. A. Yes.

Q. And this, then, must be another one. A. Yes, it looks like that.

Q. But you can't remember what it involved? A. No.

Q. Will you go on, please, and read further on in this where it quotes from a letter from Sturzenegger, your banking house, of June 17, 1943. A. I have read only the first sentence.

MR. SCHWARTZ: I would like to pause for a moment, if I may, so your Honor may read it.

(The Master examined the document.)

By MR. SCHWARTZ:

Q. You said there in that thing quoted from your letter of June 17, 1943 that you authorized Farben to take out a deposit of the 901 shares and you said, "... to which, among

other things, you"—Farben—"are entitled by the transfer." A. Yes.

Q. There is a reference to "other things." A. Yes.

Q. Do you remember what those other things were?

A. That is just what I ask myself: I believe that it
9459 was in a combination transaction handled, but I cannot remember what it was.

Q. You have no idea, have you, Mr. Sturzenegger, what the market value on a forced sale of these shares would have been in June 1943? A. No idea.

Q. Do you know of the existence of any customer you might have had for them other than Farben? A. Well, I do not get your question.

Q. Do you know of any other possible customer who might have bought them from you at this time? A. Well, I thought it could be perhaps Norsk Hydro, but it is probably not the case according to this internal transfer. It was bought by Greutert—I wasn't sure. I had a vague recollection that it was handled via Norway, but it seems to be a misunderstanding or a not correct recollection.

Q. Was Norsk Hydro ever interested in this company to your knowledge? A. Not to my knowledge.

Q. Did you know before you saw these documents that Krupp and Vereinigte Stahlwerke were the other people interested in it with Farben? A. No, I didn't know that.

Q. You have no explanation, I gather, as to why Greutert or Chemie should have bought this interest from Farben?

9460 A. No.

Q. Or left it with Farben, though they were registered shares? A. No.

Q. Failed to notify Norsk Staal? A. No idea.

Q. Greutert never voted these shares in all the time it owned them? A. I don't think so.

Q. That would have been almost impossible, would it not, if they were on deposit with Farben and registered in Farben's name? A. Yes, if they were registered in Farben's name, apparently.

Q. So you didn't even have to sign proxies that your interests would be represented? A. Yes.

Q. Did you know that Farben voted them throughout this period? A. No, didn't know it.

* * *

9491 Q. Taking the other information on this sheet, will you let me tell you what we think this is. We think this is a summary of information by Vereinigte Stahlwerke on a company in which it owns an interest, and it is some kind of a digest, an encyclopedic job.

9492 Mr. Wilson: The company being Norsk Staal?

The Witness: Norsk Staal.

Mr. Schwartz: Yes, it is listed at the top; "Norsk Staal, Domicile, Oslo," and so on.

By Mr. Schwartz:

Q. Do you notice the statement of the object of the company at the top, "The acquisition, preparation, manufacture, and utilization of inventions or processes for the production of metals, principally iron, steel, and spongy iron from any kind of ore by gas reduction or in another way, and the further treatment of the manufactured products"? Do you notice that? A. Yes, I see that.

Q. Does that refresh you as to your knowledge of the purpose of Norsk Staal or its objectives? A. No.

Q. So far as you now know, you have never known anything about the purpose of Norsk Staal? A. No, I didn't. I only remember that it was a parcel of stock that a very long time—it seemed to go very far back—had been owned by some of the Basle firms, and was deposited, apparently, with I. G. Farben.

Q. I was right in thinking that nothing we have shown you has helped you to remember anything about the objectives of Norsk Staal? A. No.

9493 Q. Then, on the left side below, "Established: October 3, 1916; Capital Stock: Common Stocks,

700,000; Preferred, 200,000; Total, 900,000;" does that help you to remember anything of the capitalization or how long it dates back? A. No, I don't remember anything about that.

Q. On the right side it appears that among participants in Norsk Staal are Vereinigte Stahlwerke with 6 per cent, Krupp with 10 per cent, and Farben with 9 per cent. Does that help you to remember that any of those three people owned an interest in Norsk Staal? A. No, no.

Q. Looking at the percentages, and the total of the figures, which you notice is 26 per cent— A. Well, I didn't know that.

Q. You never knew during the time you held this Norsk Staal stock who were the other owners of the Norsk Staal? A. No, except that I should say maybe at the moment we sold it to I. G. Farben that—

Q. But you have said you didn't know you sold it to Farben; you only knew you sold it. A. Sold it, but I remembered I had some talk or whatever with Gierlichs. I remembered at least the name; didn't I tell you?

Q. Yes. A. And—

9494 Q. What did you learn then? A. Well, the fact that Gierlichs had to do with it may have been an indication that I. G. Farben had, too, something to do with it.

Q. How did you know when the time came that you wanted to sell this that Gierlichs had anything to do with the problem? A. I didn't tell you that.

Q. Beg pardon? A. I didn't tell you that.

Q. I know. I am asking you now.

THE WITNESS: May I please ask the reporter to repeat the question.

MR. WILSON: Would you read the last few questions and answers.

(The questions and answers were read by the reporter as follows:

"Q. But you have said you didn't know you sold it to Farben; you only knew you sold it.

"A. Sold it, but I remembered I had some talk or whatever with Gierlichs. I remembered at least the name; didn't I tell you?

"Q. Yes.

"A. And —

"Q. What did you learn then?

"A. Well, the fact that Gierlichs had to do with it
9495 may have been an indication that I. G. Farben had, too, something to do with it.

"Q. How did you know when the time came that you wanted to sell this that Gierlichs had anything to do with the problem?")

THE WITNESS: I cannot tell you how it came up, on what occasion and what was discussed.

By MR. SCHWARTZ:

Q. So apparently somehow, though, you learned or guessed that Gierlichs had something to do with it, so you discussed it with him? A. I cannot remember it. It is more drawing a conclusion. I see that Gierlichs wrote memorandums—I see from these documents. I remembered that he had to do with the matter when this transaction, I mean the sale of this parcel, was carried through. That is all I remember. I do not recollect whether he first approached me or whether one of us asked Mr. Gierlichs. All that is not clear in my mind.

Q. Well then, somehow, however, you learned that he had something to do with it, because you just didn't pick him out of thin air as someone to discuss it with. A. I don't think so. And there is still the fact that was known to me and I remembered, that we saw from those other documents, that the shares were deposited with I. G. Farben.

* * *

9535 Q. Mr. Sturzenegger, you remember the matter of your holding shares of Athanil A. G., Greece, for Farben? A. Yes.

Q. For the Master's background and to refresh you if necessary, Athanil was a sales company for Farben's products in Greece, was it not, in Athens? A. I believe so.

Q. And you testified earlier as to that that you had held certain shares in Athanil as a continuance of an old relationship that Mr. Greutert had had. You had held them for trust for Farben. And there were a block of shares involving Mr. Bertram in Athens. And that you had punctually

9536 reported them to the Swiss Compensation Office at the time of the census, was it not, of German assets in Switzerland in 1945? A. Yes.

Q. And you thought that you or your firm had owned them. That Farben had probably lent Mr. Greutert or the firm the money to make the loan to Mr. Bertram. A. Well, I didn't get your last question, please.

Q. Well, I'm just trying to sum up and refresh you and if your memory is good as to it. But wasn't it a situation in which Mr. Bertram had once taken a loan from Mr. Greutert to buy a hundred shares of Athanil? A. Yes.

Q. And Mr. Greutert had a kind of an interest in that. He had a pledge or he had a right to buy them back at any moment. A. I think he had an option.

Q. An option to buy them. And he had given Farben an option to buy them from him. So he was really kind of a trustee for I. G. Farben with respect to those shares. A. Yes.

Q. And that after his death you stepped in and continued the relationship he had had. A. Yes.

Q. And I think you also said that you then actually

9537 exercised the option and bought the shares back. A. Yes, that's my recollection.

Q. So they were in your possession and so you reported them punctually to the Swiss Compensation Office? A. Yes.

Q. And to refresh you further, do you remember or did you know that in that Joint Commission document which was submitted to the SCO, October 7, 1947, they said various people in the Basle circle had cloaked? (Reading) "Mollwo, DuBois, Werder, Sturzenegger held participations in companies outside of Germany as trustees for Farben. A partner of Sturzenegger & Cie. also assisted Farben in Farben's efforts to cloak its foreign holdings." Then they gave among the examples:

"1. Hans Sturzenegger acted as trustee for Farben with respect to shares of Athanil of Athens, Greece."

A. I have a vague recollection about it.

Q. Then—and I would like you to follow me in the German—the SCO in its November document, November 1947, at page 43 said: —they had little subsections, you remember, on Budanil, Athanil and Romanil, and I would like you to look at the subsection on Athanil in the German text, and I will read the translation and we will more or less agree that it is the text:

"This company has no connection with the I. G. Chemie."

9538 And this, your Honor, is as to Athanil. That is the caption.

(Reading continued) "A number of years before the separation of the I. G. Chemie from the I. G. Farben, Greutert & Cie. sold 100 Athanil shares in trust for the I. G. Farben to a Mr. Bertram in Athens, in connection with which the gentleman in question was granted a loan. Bertram engaged to sell the shares back again with an offset of the balance of the debt. On the other hand, the I. G. Farben had the right to acquire these 100 Athanil shares. The matter was arranged by Greutert personally and in his name and was then taken over by Dr. Sturzenegger. This situation too was punctually reported to the clearing office at the time of the investigation."

A. That is a correct translation.

Q. Well, first, I'd like to clear up a point. Was it reported to the clearing office at the time of their investigation—that is, in response to questions—or was it reported with everybody else who was reporting German-held assets in Switzerland?

MR. WILSON: I object to that question until I learn its relevancy.

MR. SCHWARTZ: Well, that is rather a harsh suggestion, Mr. Wilson. This is a report by Mr. Sturzenegger of assets he held for Farben, and I am trying to establish the date.

9539 There is quite a difference between the time of the census and the time of the investigation by the SCO.

MR. WILSON: The date of what are you trying to establish?

MR. SCHWARTZ: His report to the clearing office of these Athanil matters.

MR. WILSON: Yes. And I say what is the relevancy?

MR. SCHWARTZ: Of the date he made the report?

MR. WILSON: Of the time and event of his making the report.

MR. SCHWARTZ: I would like to know its context, its time. Was it late? Was it early? Was it a long document? Was it a short one? I think it's highly relevant that Mr. Sturzenegger once made a report to the SCO of holdings for Farben, and I would like to explore all the details.

MR. WILSON: I don't see the relevancy of it. I think that the circumstances under which he held the Athanil shares, whether he disclosed to Tom, Dick or Harry that he held those shares, and the manner in which he made the disclosure are irrelevant to this discovery.

THE MASTER: It seems to me that in view of the SCO report that it would be competent for Mr. Schwartz to find out just when the shares were reported by Sturzenegger and Company.

By Mr. Schwartz:

9540 Q. Will you answer the question? A. As far as I recollect, Mr. Schwartz, they were reported the moment when a general census of the German interests was made. That means previous to this time. That is the best of my recollection.

Q. Previous to the time they came to your premises and asked you lots of questions and so on? A. I believe so.

Q. Certainly that census was long previous to the October 7, 1947 date when the Joint Commission wrote its memorandum? A. Yes. The general census was much earlier.

Q. 1945, wasn't it? A. 1945 it was, if I'm not mistaken.

Q. So the last sentence in the SCO—"punctually reported to the clearing office at the time of the investigation"—could have been stronger or different? That is, it was punctually reported earlier than the investigation? A. Well, I'm not sure in German how it reads—what the translation is. In German it reads: "Auch dieses Verhaeltnis ist der Verrechnungsstelle rechtzeitig anlaesslich der Enguete." "Enguete"—that may mean the one or the other.

Q. You mean the census or the investigation of which this is a product?

9541 A. Yes. We call "Enguete" a general request to report.

Q. I see. Now, can you tell us the best you can just the basic facts, the things you did report? Until now I have been basing it on your prior general testimony. This situation was "punctually reported." Just what did you report? A. Well, I have no absolutely clear recollection. There were forms which had to be filled in.

Q. Yes? A. And I believe—that is my recollection— that one of these forms were German balances towards our firm that had to be reported in the form. Farben balances there we put in under the caption "Remarks" and briefly reported the relation.

Q. And the fact that you reported was what? That you

held shares and that these shares were a German's, Farben's? Was that the fact? A. Well, that I cannot report. It's just a technical detail. I think we tried to give in a short way the substance of the situation.

Q. And what was that substance? A. Well, the substance, as I see it, now, but please, I cannot remember how it was actually demonstrated, but the substance I think would be that we held certain Athanil shares under an agreement with I. G. Farben. Now, I do not know

9542 whether this agreement was, explicitly named, but that may be that it was mentioned that I. G. Farben had an option on that, that we had offered them for sale. In any way, I think in such a way that fiduciary capacity of our having held the shares was reported. Well, that's how—

Q. You said you reported as to certain Athanil shares that you held. Do you remember that it was as to 100 that you had gotten from Bertram or more than 100 from Bertram? A. That I do not recollect how it was reported. I believe that there were—I do not recollect the number—there were a number of shares, and beyond the Bertram shares.

Q. Oh. You reported some in addition to the Bertram shares? A. No, I do not recollect how it was reported, but—

Q. You think the fact was—A. I think the fact was that—

Q. —you held more than 100 for Bertram or that had originated with Bertram? A. Well, it depends also from the time. I think it was not always the same. May be that in previous years there were more and were sold.

Q. Yes? Am I clear you can't remember the total number of shares you reported? A. No, I cannot remember.

9543 Q. But what was the fact toward the period when you were reporting? A. Well, I cannot recollect neither, because I do not recollect the exact number. I think if 100 are mentioned it would be right. I have only a vague recollection that at some time there were, apart from the Bertram shares, some other Athanil shares.

Q. Yes indeed. A. Were there not?

Q. Yes indeed. You have read all our documents, haven't you? A. Yes, of course, I can—there are thousands of dates. I cannot—

Q. As to Athanil, you remember there is quite a bit of material on other shares than Bertram's? A. Yes.

Q. At the time you testified on the deposition last February, a year ago, you had not seen our documents? A. No, I hadn't.

Q. And you saw them since? A. Yes.

Q. Right. And don't you remember that there is quite a bit of material on other shareholders and other stock and other holdings and options and what-not? A. Well, I remember—

9544 Q. I mean in these documents.

MR. WILSON: In connection with Athanil?

MR. SCHWARTZ: In connection with Athanil, yes.

THE WITNESS: There were some documents I remember, but I cannot recall what specific documents.

By MR. SCHWARTZ:

Q. I see. A. I think there was— for instance, wasn't there a name that just now comes up in my memory, Schlagenhofen?

Q. Schlagenhofen, Lindenmeyer, Kriesis. A. They were all in some way connected with this Athanil business.

Q. Right. I'm glad you haven't forgotten completely the documents.

MR. WILSON: Kriesis did you say?

MR. SCHWARTZ: Yes.

MR. WILSON: It sounds like a good old Greek name, doesn't it?

MR. SCHWARTZ: Yes indeed.

By MR. SCHWARTZ:

Q. But you don't remember the facts beyond Bertram at the time you made the report? A. No.

Q. So you can't say whether this SCO paragraph is correct, because if you held more shares than Bertram's they
9545 haven't mentioned it and then they would be incorrect. So you—A. No, I cannot.

Q. Do you remember that you reported that you held options on the shares of two brothers named Kriesis? A. I cannot remember that, and I do not know whether at that time we had them. Now you mention the name, he was too one—and I think Papapanos.

Q. There was another stockholder named Papapanos or something like that? A. Yes.

Q. Do you remember you reported anything to the Swiss Government at the time of the census beyond 100 shares concerning Bertram? A. No, I really cannot make a statement because I have no recollection about that.

Q. You can't say yes or no. A. Yes.

Q. You're clear you reported 100 shares having to do with Bertram? A. I do not recall the 100; but I believe to be pretty sure that we reported—

Q. Shares connected with Bertram? A. Shares connected with Bertram or Athanil.

Q. Or both really?
9546 A. Yes.

Q. Bertram's shares in Athanil? A. Yes, I think so.

Q. And the report you did make was a report that you owned these shares? A. That I told you already I cannot recollect the form, how it was reported. I believe it was some reference to the matter in the remarks in one of those documents.

Q. But haven't you told us the basic fact you reported was that you held certain shares in the remarks; that it was Farben who had the option? A. Yes, I think so. I mean it depends or it depended on the questions on these forms, and I do not recall all that.

Q. Because the information we have, Mr. Sturzenegger,

and I will show it to you, is that Mr. Bertram was not any longer a stockholder toward the end of the war, so we wonder how it is you could have reported anything to do with Bertram shares. A. He was according to your information not?

Q. No longer a stockholder at the end of the war, by the time that census was taken. Somebody had succeeded him as a stockholder. A. I see. Well, it all must be clear from some papers. I do not know now just whether these shares Bertram had were

9547 retransferred to us setting off his debt, because they were formerly sold to him, or whether another gentleman succeeded him. That's not clear to me.

Q. Well, you testified between 493 and 500, among other things, that you held Athanil shares for Farben. Then you talked of this little parcel of shares. You said you didn't use your personal money but you supposed the money was loaned by his firm; maybe Greutert had lent the money. A. Yes, that was the best of my recollection.

Q. "I think that I personally and not my firm held the shares." I don't mean that this is a direct quote, but it's a summary of what you said. A. Yes.

Q. "For a time the shares were booked in Bertram's name. He was debited for the amount. Later, probably after Greutert's death, the shares were bought back and were booked in my name or in my firm's name." A. I see.

Q. So you were speaking, I'm pretty sure the record will confirm, of shares that you owned that had come from Bertram. A. Yes.

Q. But our information is that someone else succeeded Bertram. A. For the whole lot of shares?

9548 Q. For his lot of 100 shares.

And so the question arises whether your report was correct. Can you help us on that? A. Well, I still believe that we reacquired the shares setting off the debt of Bertram or Bertram's estate. I'm not absolutely sure. And I believe

to remember that there was some correspondence with I. G. Farben in the matter.

9709 By Mr. McGraw:

Q. Now, Mr. Sturzenegger, I think at our last discussion the name of Mr. Heberlein came up as a shareholder. A. Yes, I remember that.

Q. In— A. —one of the Indian companies.

Q. In Agfa Photo, Bombay? A. Agfa Photo, yes.

9710 Q. And I believe I asked you whether you had recommended him to Farben as a trustee shareholder for this Indian business, and your answer, as I recall it, was that it was probable that either you or Mr. Greutert had. A. Yes, and I think more probably Mr. Greutert, because I didn't know the gentleman before.

Q. With respect to 25196, Doctor, can you identify the signature? A. On what document? On these different documents?

Q. Yes, start with the top one. A. No, I do not know the signature.

Q. You do not know the signature of Mr. Heberlein? A. No.

Q. He was a client of your firm, was he not? A. No, he was not. I don't think so. I think, as I said, the one Mr. Heberlein—but I believe that was the father—was a friend of Mr. Greutert and this older gentleman was on the board of one or two companies connected with Basle. For instance, I believe he was on Technik und Finanz, A. G., if I am not wrong. There may be another one. To the best of my recollection, that is not this Heberlein. I think this is a son.

Q. This is the son? A. I believe, yes. Well, I am not absolutely sure. I think so. I am not familiar with the signature, anyhow. What

9711 is the Christian name here?

Q. Hugo. Exhibit 304, Mr. Sturzenegger. Does

that help you to recall anything about these documents? A. No. 304, you mean?

Q. Exhibit 304.

THE MASTER: What is the number of that?

MR. MCGRAW: 25197.

MR. WILSON: January 5, '39.

THE WITNESS: Well, after having seen this document, I vaguely recollect, I believe, that some correspondences may have been exchanged via Basle, correspondences between Heberlein and Mapro in connection with this matter.

By MR. MCGRAW:

Q. But it does— A. Pardon me? But it may be I have discussed it with him, but I have no clear recollection about it.

Q. It doesn't help you to recall that you also discussed him with Farben? A. That I discussed—

Q. Mr. Heberlein's participation with Farben. A. No, no.

* * *

9714 Q. Mr. Sturzenegger, I hand you our Exhibits 309 to 314 and ask you to take each document and tell us whether you can identify the signatures on the documents. A. Yes, these are the signatures of Dr. Grieshaber.

Q. Karl Grieshaber? A. Karl Grieshaber, yes.

Q. Does Exhibit No. 309, the top one, Mr. Sturzenegger, indicate to you that this man was recommended by you as a trustee shareholder in Chemdyes? A. Is your question, Mr. McGraw, whether this text indicates it?

Q. That's right—not whether it indicates, but from this text do you recall that you did contact Mr. Grieshaber and ask him to take this participation under these conditions? A. Again, I think it is probably Mr. Greutert, because I know that Mr. Grieshaber was an old school friend of Mr. Greutert. They knew each other a long time. And now, on the request of Mr. Greutert, I may have talked to him, too. That is possible.

Q. But you don't recall that you did talk to him? A. No, I think I recall some letters having been exchanged. That is about all.

Q. The phraseology "at the instigation of Dr. Hans Sturzenegger" doesn't suggest anything to you, does it?

9715 A. Well, it purports to be the case that I communicated with him on this special topic, and that may well have been the case.

Q. It doesn't help you to recall that Grieshaber's participation was the subject of discussion between you and any officials of Farben? A. No, although I can not exclude the possibility that it has been discussed, too.

Q. Well, you have not even the vaguest recollection that it was? A. My recollection is that we, maybe Mr. Greutert, maybe myself, had been asked whether we could recommend one or the other gentleman that perhaps would like it, or perhaps would be in a position to take over a special task in connection with these shareholdings, and that as a consequence of such a thing these gentlemen, as well as Heberlein, Grieshaber, have been approached, probably by Mr. Greutert. And then I remember that— I believe to remember at least— that I exchanged some letters with Grieshaber, maybe Heberlein, too.

* * *

9887 MR. MCGRAW: I hand to the reporter for marking our Document No. 25055, and a copy of the translation.

(The document and translation referred to were marked for identification as Defendants' Exhibit No. 352-25055.)

By MR. MCGRAW:

Q. Will you look at this document, Mr. Sturzenegger.

9888 A. Yes.

(The witness examined the document.)

THE WITNESS: I have seen it.

By Mr. McGraw:

Q. Can you identify the signatures for us, please? A. The left is of Mr. Haller; the right signature, of Mr. Werder.

Q. Now, does this document help you in any way to fix the time when Osmon became the owner of the Voorindu shares? A. No.

Mr. Wilson: Don't forget that says "administered by us."

The Witness: Yes, and I am puzzled by the number of the shares. It is not in accordance with my recollection.

By Mr. McGraw:

Q. Well, the number of shares isn't in accordance with our information on what you took over originally in 1928, Mr. Sturzenegger. A. I see.

Q. I was just wondering whether this might help to bring to mind some further transactions involving the Voorindu shares. A. No, it doesn't help me. I mean the fact that it is said here "administered by us"—that, of course, doesn't say anything about the owner. We administered many assets owned by I. G. Chemie or Osmon.

Q. That is quite true. Did you administer any other
9889 assets owned by Osmon? A. At certain times, yes.

Q. Do you recall some of them? A. Well, for instance American I. G. Chemical "A" shares, and there may have been others.

Q. The term "administered by us" simply means that you held the shares in your custody for the account of Osmon? A. As a bank, yes.

Mr. Wilson: Or for the account of someone else, not necessarily Osmon, Mr. McGraw.

The Witness: No, of course not.

* * *

9950 Q. The next box to the right, Mr. Sturzenegger, is headed "De'a, Arnhem." A. Yes.

Q. Do you recognize that firm as a participation held by Voorindu as of May 1939? A. I believe to remember that Voorindu had some participation in this company. I do not remember the details, the amounts and so on, except the fact that Mr. Mollwo I think, who is figuring in this chart, had a minority trustee ownership of shares in this company.

Q. Do you know when Voorindu acquired its minority participation in Defa? A. No, no idea.

Q. Do you know whether it was acquired from I. G. Farben? A. No idea.

Q. Do you know whether Mr. Mollwo's participation was optioned to Farben? A. I think so.

Q. Do you know that Mr. Bogaerts, who is shown as a shareholder, also optioned his shares to Farben? A. No, I do not know this Mr. Bogaerts.

9957 MR. MCGRAW: I would like the record to show that Exhibit No. 360-5062 consists of a letter dated June 7, 1934 from Mollwo to I. G. Farben, a sales offer by Mollwo dated April 27, 1934, and a declaration by Mollwo dated April 30, 1934.

By MR. MCGRAW:

Q. I hand you our Exhibit 360 to Exhibit 366, Mr. Sturzenegger, and ask you if you will please read them.

(The witness examined the documents.) A. I have seen them, Mr. McGraw.

Q. Mr. Sturzenegger, will you identify the signature for us on Exhibit No. 360? A. That's apparently the signature of Mr. Mollwo.

Q. You recognize Mr. Mollwo's signature, do you not? A. Yes.

Q. Is it also Mr. Mollwo's signature on the sales
9958 offer part of Exhibit 360? A. That is the attached document? Yes. Sure. The same signature.

Q. And also on the declaration attached to the same

document, Mr. Sturzenegger? A. That's correct; same signature.

Q. Does this document help you to recall when Mollwo acquired the Defa shares for Farben? A. No, I have no idea. I know and knew the fact that as is mentioned in the SCO report Mr. Mollwo held certain shares in this company in a fiduciary quality for I. G. Farben and that fact has been reported duly to the Swiss Compensation Office.

Q. Do you know of any other shares Mr. Mollwo held in a fiduciary capacity for Farben? A. Yes, I remember Budanil shares. He mentioned that once to me.

* * *

10025 Q. Mr. Sturzenegger, will you read the second paragraph on page 12 of the text? It states: "The indepedence of the shareholders of Chehamij is an essential factor for attaining the aim of eliminating all mediate or immediate connection, in any way legally founded, between Chehamij and I. G." Does that help you to recall anything about the role Parta was to play as a shareholder of Chehamij? A. I remember that at some time in 1939—I do not remember the month—we—some people in Basle—were asked whether we could not contribute by way of a capital investment in a company which would take over such tasks, and I think that was in connection with the previous desire expressed by I. G. Chemie to relieve Voorindu as much as possible from these matters mentioned before. May be—I'm not certain—they asked whether I. G. Chemie or the firm Greutert would be in a position to assign a certain participa-

10026 tion in this company.

Q. In Chehamij? A. In Chehamij. I don't know whether it was already named Chehamij or whether it was just left open at these early stages as to what company it should be. And I think—I do not recall all the details, but it was declined that I. G. Chemie should do it and my firm.

On the other hand, I think after having been asked several times we rather reluctantly gave the consent that one con-

nected company—I mean Parta—would make such a contribution, but solely as an investment and only on condition that proper interest return or dividend return was guaranteed by I. G. Farben. And my recollection is the whole matter was agreed from Basle—I mean the Basle people—considering the whole situation, considering the fact that we were in difficult discussions about cancellation of the dividend guarantee contract, considering also the long time friendly relations. I think it was thought that it couldn't be declined, and so it was made just as a capital investment. That's how I have it in mind.

Q. In other words, Parta held the shares but did not participate in the management? A. No, not at all. That was understood from the beginning, and I think it's too, an explanation why I am not more in the picture of the whole matter and other gentlemen
10027 were neither.

THE MASTER: At that time you were not an official of Chemie, were you, in 1939?

THE WITNESS: No, but, of course, because I had had legal education, and so on, and in consideration of the friendly relationship of both firms, I sometimes was asked to cooperate in matters and so on, just on an informal basis.

THE MASTER: Well, you, of course, were acting for your own company, Greutert?

THE WITNESS: Sure, but Mr. Greutert was on the board of I. G. Chemie, I mean, and we did a lot of banking business for I. G. Chemie, so it was rather natural to consult me too sometimes.

10091 By MR. SCHWARTZ:

Q. Mr. Sturzenegger, I would like to discuss Winnica with you, and I would like you to have before you the paragraph on pages 46-47 of the SCO Report of November '47. A. I see.

Q. It begins toward the foot of the page. A. Yes.

(The witness examined the document.)

THE WITNESS: I have read it.

MR. WILSON: May I see it, please?

MR. SCHWARTZ: He has the German text. I can show you the translation.

MR. WILSON: Let me see the German text.

THE WITNESS: It begins at the bottom of the page.

MR. WILSON: I see. I wanted to see what the subject was.

MR. SCHWARTZ: The subject is, "Liquidation of the participation in Winnica, Poland."

THE WITNESS: Yes.

10092 By MR. SCHWARTZ:

Q. Mr. Sturzenegger, I don't think there is a problem on accuracy of translation, so I would like to read you the translation slowly, and you confirm or not, as you will or can, the accuracy of the facts stated. A. All right.

Q. If you find I am wrong on translation, please speak up. A. Yes.

Q. "Winnica was established by Kuhlmann, Paris, and the I. G. Farben with a capital of zlotys 500,000." A. Yes.

Q. "Both companies participated to an extent of 50 per cent." A. Yes.

Q. Accurate? I am taking your yeses to mean "accurate." A. Yes.

Q. "In 1935 the I. G. Chemie acquired the I. G. Farben interest for Swiss francs 584,099.15. Until 1942 the I. G. Chemie wrote down this participation to francs 1.00." I see you are nodding your head. A. Yes.

Q. "Winnica's capital was meanwhile increased to zlotys 1,500,000." A. Yes.

10093 Q. I think that is wrong. I think it should be "by zlotys 1,500,000." You remember, do you not, that the total capital of Winnica was 2,000,000? A. I think it was 2,000,000.

Q. So that is a real mistake. It does say "to 1,500,000" but it should be "by." A. I think you are right. It should read "by."

Q. "The I. G. Chemie acquired 50 per cent of this capital." A. Yes.

Q. Now, that is right, but I think they mean of the increase of capital, giving a total of 50 per cent. A. I think so.

Q. Right. "In 1941 the I. G. Farben appears to have purchased the interest of the Kuhlmann firm." Right? A. Yes.

Q. "In 1943 the I. G. Chemie sold its Winnica shares for francs 800,000 to the Discont-Credit A. G., Zurich." A. Yes.

Q. "The selling price seems to have been reasonable in comparison with the purchase price." A. Yes.

Q. Now, is that really the way it should be, "reasonable in comparison with the purchase price?" A. Well—

10094 Q. As a matter of translation, I mean. Or does it have the sense of "profitable"? A. No, not "profitable." "Angemessen"—"appropriate," perhaps.

Q. "Appropriate," "reasonable," I see. "Who in the end was the purchaser of these shares is not evident from the correspondence with the Discont-Credit A. G." I won't ask you to say whether that is right or not. That is a matter of evidence. "However, upon being questioned, the gentlemen stated that in all probability Discont-Credit made the purchase for the account of the I. G. Farben." A. That is right.

Q. All right. Do you know what gentlemen they are referring to, what gentlemen were questioned? A. I think that Mr. Germann and myself both were questioned.

Q. In your capacity, I suppose, for the Sturzenegger firm, and Mr. Germann for the Chemie firm? A. No. In this respect I think it referred to an investment of Chemie's, so I think as representative of Chemie, though I do not remember these details, and I cannot exactly remember now who was questioned on these specific topics. I remember

that we, I mean Mr. Germann and myself, were questioned on quite a number of topics, and I think that was one of the topics.

10095 Q. I see. So you two were at least among those who said that in all probability Discont-Credit made the purchase for the account of Farben? A. Pardon me?

Q. So you two, Mr. Germann and you, were at least among —maybe you were all of the gentlemen, but you were certainly among those who stated that in all probability Discont-Credit made the purchase for the account of Farben? A. I see. I think so.

Q. All right. A. I mean I cannot remember this specific discussion.

Q. But if you had been questioned you would certainly have said that? A. Yes.

Q. What were the facts on which you based your statement then or now that the purchase was in all probability made for the account of Farben? A. Well, I remember there had long before been the wish of I. G. Chemie to abandon, if possible, this participation, to sell it.

Q. Why, sir? A. Well, I should say for several reasons, one that it was, of course, not a very good investment, as an investment in an occupied territory is not a delightful investment.

Q. Not a what?

10096 Well, not an enjoyable, not a good investment.

Q. How do you mean "good," "enjoyable"? A. Well, the fact that a country is overcome with war of course means a devaluation in some way of an asset or an investment a neutral company may have in such a country. Normally it is the case.

Q. I'm sorry to interrupt. You go on. You said a number of reasons. A. Well, another reason I believe to remember is that we were concerned, too, about the fact that as a consequence of the conquest of Poland the Germans, I mean German authorities, and I. G. Farben were, of course, very closely connected with this whole matter, and so in an in-

direct way I. G. Chemie as an important shareholder in this Winnica corporation seemed to be in some way affected, too, by this fact. I remember—

Q. How do you mean "affected"? You mean involved? A. Involved.

Q. In the German Government's and Farben's interest in Winnica? A. And we didn't like that at all. I remember, if I am not mistaken, in this connection that I. G. Chemie, maybe my firm, too, as a temporary depositor of the Winnica shares, were asked to consent to certain decisions taken with respect to Winnica which would have involved us in more, and we didn't

10097 like it at all.

Q. What decisions are you referring to? A. Decisions taken by a stockholders meeting, if I am not mistaken.

Q. Beg pardon? A. Taken by a stockholders meeting, if I am not mistaken.

Q. A decision to do what, or what kind of a decision? A. Well, I am not certain about the fact. What I remember is that there seems to have been a stockholder meeting with changes of the organization of the Winnica, and that in that connection we as stockholders were asked to formally adhere to such decisions. We didn't do it, it is my recollection, and of course we didn't like such things.

Well, I think these are roughly two principal reasons that come up in my mind why Chemie wished and hoped to get rid of this investment.

Q. Let's see if I have understood your two reasons. You have said first—I am just summarizing—that the investment in occupied territories was not a good investment because of the devaluation of interest in occupied territory, and second, the matter of involvement with the German Government and Farben in matters such as the decision to do something. A. Roughly, yes.

Q. Roughly, yes. Any other reasons?

10098 A. I think these are the principal reasons, at least as they come up in my mind now.

Q. Here is something I am not clear about. I asked you—and I don't think you have answered it yet—on what facts you based your statement that the sale of Discont-Credit was in all probability for the account of Farben. A. Yes, and I mentioned those facts just to motivate it, that according to my recollection I. G. Chemie had attempted to sell it, and of course—

Q. Who had attempted? A. I. G. Chemie had attempted, I think, to sell it.

Q. Yes. A. And it may be that in this respect there has been a discussion between Mr. Gadow and one of the Farben people. I was not a party, but I think that the topic was once touched.

Q. You really know that the negotiations for sale were with Farben and so that is why you believe that when Discont-Credit bought it it was for the account of Farben? A. I think that once Gadow told me that he had discussed that with one of the Farben men, and of course I don't think that other parties at that time would have been interested.

Q. Other possible purchasers than Farben? A. Yes, under those circumstances.

Q. What facts are in your mind that make you think that other purchasers would not have been interested in buying

10099 Winnica? A. Well, it was a company in which, as we knew, I. G. Farben had, a long time before, had an interest in the form of, I think, agreements, the details of which were not known to me. But I. G. Farben and the French chemical concern Kuhlmann had started business together. So obviously I. G. Farben had an interest in the matter, and it had still at the time when half of the shares were held and owned by Chemie.

Q. Actually Farben and Kuhlmann operated, in the operating sense, half and half; isn't that so? A. Yes.

Q. So the only possible people interested would have

been Farben and Kuhlmann and you knew that Kuhlmann would not be interested? A. Yes, under those circumstances, occupied territory and so on, I think they would't have been interested.

Q. You also knew that in that period roughly, simultaneously Farben was buying Kuhlmann's interest in Winnica? A. I didn't know that. I think I got acquainted with the fact later. I have seen it in those documents you have submitted to Mr. Wilson.

Q. You had no knowledge until the war was over, say, until after the surrender of Germany, that Farben was buying Kuhlmann's interest? A. No.

10100 Q. Kuhlmann's interest in Winnica? A. I don't think that I ever knew before.

Q. Never knew it during the war? A. Not to my recollection, at least.

Q. Then why didn't Chemie ever approach Kuhlmann as a possible purchaser?

MR. WILSON: I object to the question.

THE MASTER: Well, I think the question is permissible. He seems to know about the matter in a contemporaneous manner. After all, he was on the board of Chemie at that time. Chemie was interested in selling it, and the question may be asked if he knows.

MR. WILSON: He answered that, that he did not approach Kuhlmann. Now he is asked why they didn't approach Kuhlmann.

THE MASTER: Well, isn't that a legitimate inquiry?

MR. WILSON: I think not, sir.

THE MASTER: I think it is.

MR. WILSON: I can't think of a theory upon which it could possibly be legitimate.

MR. SCHWARTZ: What is your ruling, sir?

THE MASTER: He may answer.

THE WITNESS: And may I just ask the reporter to read the question.

(The pending question was read by the reporter as follows: "Then why didn't Chemie ever approach Kuhlmann as a possible
10101 purchaser?")

THE WITNESS: Probably—but that is not independent knowledge, but I think—

THE MASTER: You don't need to answer it if it isn't from your independent knowledge. We don't want you to surmise as to why, but if there are any reasons, facts that you can point to, it is different.

THE WITNESS: I seem to think that under the prevailing circumstances Kuhlmann wouldn't have been willing nor in a position to buy it.

By MR. SCHWARTZ:

Q. And that was your belief during the war, so you didn't approach Kuhlmann; is that it? A. Well, I think so.

MR. WILSON: Did you have a belief during the war upon that point?

THE WITNESS: It is difficult to say, but as I look now upon that matter, it seems to me in some way along those lines.

THE MASTER: If you know, was Kuhlmann a French citizen?

THE WITNESS: Kuhlmann was a big French corporation.

By MR. SCHWARTZ:

Q. Tell us what was Kuhlmann, please. A. Well, I am not acquainted with the details, but Kuhlmann was a rather big French manufacturing concern in the chemical branch.

10102 Q. It was the large French dyestuff producer, was it not? A. Yes, sure.

Q. Comparable almost in size to Farben in the field of chemicals and dyes? A. Well, I don't think that it was as to the size comparable, but as to the scope of its business.

Q. Scope in France. And it has had a long history in

France, and when people think of French dyestuffs they think of the establishment Kuhlmann? Isn't that it? A. No, I think there are other chemical enterprises.

Q. Aren't there other chemical dyestuff companies in France closely associated with Kuhlmann? A. There may be, but there are, I think, independent, too.

Q. There are other producers, too? A. Sure.

Q. When you told us that one of the reasons you wanted to abandon it was that an investment in occupied territories is not a good investment because of the devaluation, were you thinking specifically that Winnica was not a good investment, or was that a general reason?

MR. WILSON: He was talking about Winnica, Mr. Schwartz.

MR. SCHWARTZ: Well, if he was, I would just like to confirm it.

MR. WILSON: You were asking about Winnica.

10103 MR. SCHWARTZ: We can clear it up much easier by asking him.

MR. WILSON: I object to it. I think the record speaks for itself.

THE MASTER: Is the question as to that was a general reason in occupied territories?

MR. SCHWARTZ: My notes say that he said that investments in occupied territories were not good investments; there was devaluation of values.

THE MASTER: That's right.

MR. SCHWARTZ: I wanted to ask him if he was speaking about Winnica or generalizing.

MR. WILSON: He was talking about Winnica.

THE MASTER: I thought it referred to Winnica, but I think to save time let's ask the question.

By MR. SCHWARTZ:

Q. Were you referring to Winnica when you spoke of investment in occupied territory? A. Yes.

Q. Did you mean that Winnica had been losing money and was in a bad way financially? A. Well, it was well known in Europe that the occupation of Poland led to great destruction and disintegration, and so we were not, of course, very happy about this investment.

Q. But did you know during the war that Winnica was in a

10104 bad way financially? A. No. I don't think we were ever informed about the details of the business.

Q. Did you know during the war that Winnica had lost money in '41 and '42? A. Had lost—?

Q. Lost money, suffered a loss. A. I don't think so. I mean I do not remember having received any reports.

Q. Well, from whatever source, did you know that Winnica had been losing money in '41 and '42? A. Well, it was just an assumption, and under these circumstances quite natural, that the investment was endangered, at least.

Q. Did you know that Winnica was completely shut down by the end of 1942, December 1942? A. No, no.

Q. At the time Chemie sold Winnica to Discont-Credit, did Chemie know that Winnica was shut down and not operating? A. No, not to my knowledge. I have learned that only from those papers submitted to Mr. Wilson.

Q. Does the suggestion that Winnica suffered a loss of 200,000 zlotys in the year '41 refresh you that you knew Winnica was suffering losses? A. No, I was not acquainted at all with such facts.

10105 Q. Did you know that the accumulated loss as of January 1, '42 was 316,000 zlotys, a little more or less? Does that refresh you that you knew Winnica was losing money? A. No. As I told you, I am not acquainted with all these figures and the developments of the company.

Q. Does the suggestion that for the year '42, by the end of '42, Winnica had a loss of 289,000 zlotys refresh you?

MR. WILSON: I object to the question. It has been answered.

THE MASTER: I think it has been answered. It seems that he knows nothing about what happened in '41 and '42.

MR. SCHWARTZ: All right, sir.

By MR. SCHWARTZ:

Q. To confirm what I believe is the purport of your answer, Mr. Sturzenegger, do you say definitely then that you knew nothing of the business operations of Winnica between the outbreak of war and the time you sold it?

MR. WILSON: I object to the question. It has been answered.

THE MASTER: I think it is all right as a clean-up question.

THE WITNESS: May I please have the question read.

(The pending question was read by the reporter as follows: "To confirm what I believe is the purport of your answer, Mr. Sturzenegger, do you say definitely then that you knew nothing of the business operations of Winnica between the outbreak of war
10106 and the time you sold it?")

THE WITNESS: Well, at least I cannot remember anything.

THE MASTER: Let's take a five-minute recess, shall we?

(Whereupon, a short recess was taken.)

THE MASTER: All right, gentlemen.

MR. SCHWARTZ: Will the reporter please mark Document 19515, which has two pages in German, and a translation thereof. These, gentlemen, were Exhibit 58 to the SCO Report.

(The document and translation referred to were marked for identification as Defendants' Exhibit No. 389-19515.)

By MR. SCHWARTZ:

Q. I hand you the German, Mr. Sturzenegger. A. Thank you.

(The witness examined the document.)

THE WITNESS: I have read it, Mr. Schwartz.

By Mr. Schwartz:

Q. Can you confirm that these were the formal documents on the occasion of the sale to Discont-Credit? A. I believe they were.

Mr. Wilson: Off the record.

(Discussion off the record.)

By Mr. Schwartz:

Q. These are dated February 22? A. Yes.

Q. Now, can you tell us the circumstances of the
10107 negotiations, the parties involved in the negotiations at the time of this formal consummation of the sale? A. No, and I was not a party. I have been informed, and I think I have seen this document. My recollection is that about this time Discont-Credit approached Chemie, especially Mr. Gadow, and that it was arranged.

Q. You mean the Discont-Credit approached Chemie to buy the Winnica shares? A. Yes.

Q. Well, hadn't you told us that the negotiations were with Farben? A. That was before, to my recollection, and I told you that if I am not wrong I remembered that Mr. Gadow had had discussions or a discussion previously with Farben people or one of the Farben people, and apparently had expressed the wish to sell this participation. And that now is the formal conclusion of the sale, and that was, if I am not very much mistaken, by approach, direct approach, from Discont-Credit.

Q. Do I understand you rightly to say that Discont-Credit approached Chemie? A. Yes.

Q. And that it was without it being understood that Discont-Credit was acting as a formal agent for Farben? A. Well, I am not sure. I told you I was not a party of this discussion. I think that I. G. Chemie or Mr. Gadow had
10108 previously stated if a sale was to take place that of course the sale would have been a sale in Switzerland,

in Swiss currency. And now, how then the whole matter was arranged, if it was arranged between them, or how Farben handled it, took it up apparently with Discont-Credit or Credit Suisse as I have learned from some documents now, that I did not know. My recollection is that one day Chemie was approached by Discont-Credit, Discont-Credit making an offer for those shares.

Q. And this was, so to speak, news to Chemie? It was not— well, my question is simple. Perhaps I haven't stated it well enough. I am asking whether the sale to Discont-Credit and the approach by Discont-Credit was a new thing or merely the formal consummation of a plan to sell made between Chemie and Farben. A. I think it is how I told you. The desire to sell was expressed by Chemie, I mean through Mr. Gadow, apparently previously. And it was emphasized, no doubt, that we—I mean I. G. Chemie—would like to get rid of this participation at the best price possible, and that, of course, if it should come to a transaction, that the counter-value ought to be paid in Switzerland and in Swiss francs. And now, how after these preliminary discussions the matter went on, how it was technically prepared, handled, I do not know at all. I think it was then probably a matter between Farben and the Credit Suisse after Farben had made up their mind to buy it. All I remember is that

10109 Chemie then got this letter from Discont-Credit. I don't know whether it is the first letter or the only letter, but my recollection is that the approach was made by this Discont-Credit A.G.

Q. Do you recall whether there were intensive or any negotiations preceding the sale with Discont-Credit? A. No.

Q. You don't remember that they were? A. No, I don't think so.

Q. Do you recall the negotiations with Farben were rather intensive, certainly as to the price to be paid? A. I remember that when Mr. Gadow told me that he had once discussed it with some Farben people—I do not know with

whom—that he had insisted upon, of course, the best possible price. And I remember that we—I mean Gadow and myself—we looked into the books and just to make out what Chemie had paid previously for the whole investment. And if I am not very much mistaken, the price Chemie got on this sale to Discont-Credit A.G. was in some way in accordance with the price paid many years before by I. G. Chemie.

Q. So then this looking into the books to find out what Chemie had paid, that was for the purpose of computing the price you wanted? A. Yes.

Q. And that was further for the purpose of asking Farben

10110 for that price? A. Yes.

Q. And then the Discont-Credit offer, or the purchase by Discont-Credit, was for the price you asked Farben? A. I think so.

THE MASTER: Although they charged you a commission, apparently, of ¼ per cent.

THE WITNESS: What?

THE MASTER: Discont-Credit charged Chemie.

THE WITNESS: Well, Discont, I think, just approached Chemie without reference to all the agreements Discont-Credit or Credit Suisse may have had with I. G. Farben. I don't think we were ever informed about this background. That was not up to us. We were satisfied to get the reasonable price.

MR. WILSON: Is Discont-Credit a subsidiary of Credit Suisse?

THE WITNESS: To my knowledge, yes. I think it is just very close to Credit Suisse.

By MR. SCHWARTZ:

Q. Do you recall that in fixing the price you were asking from Farben you took the cost price and converted it into Swiss francs, and that you added interest on your cost price? A. Well, I think that was, of course, tried, but I am not sure whether now the price I. G. Chemie got included

the interest. I think if the interest had been fully taken into
10111 consideration the amount would have been higher.

Q. Do you recall that it was Gierlichs who was in Basle and that you and Gadow gave him your computation of the price you wanted for the Winnica shares? A. No, I do not remember the visit of Gierlichs. It may be that he was here in this or another connection. I remember, as I told you before, that some reckoning of price took place at some time and we tried to make out and to lay the basis for what we ought to have, at least. I don't know now whether this reflects all we wanted. I think, as I told you, that is taking not into consideration the interest. I think it was we wanted more, but at least we got that.

Q. Do you recall that Gierlichs was involved in any way in these negotiations for the sale? A. I am not sure. I think Gadow told me that he had talked with some other people before.

Q. What others? A. If I am not very much mistaken, he once mentioned Schnitzler.

Q. Von Schnitzler, that is? A. Von Schnitzler.

Q. He is a senior member, or was a senior member, superior member, of Farben, was he not? A. He was a member of the board.

Q. Any others?
10112 A. Not to my recollection.

Q. Von Rospatt, perhaps? A. Not to my recollection.

Q. Do you recall what the negotiations back and forth with respect to the sale were, what Chemie advanced as a reason Farben should buy it, what Farben advanced as to what it should pay, that kind of details? A. No, I do not recall all those details because I haven't been a party in these discussions.

Q. Well, to cut it a little shorter, Mr. Sturzenegger, wasn't it the fact that Farben was asked by Chemie to buy pursuant to a long-standing agreement that Farben would

keep Chemie from having any losses on this investment? A. Well, how it was motivated in details I do not know. I mean it was certainly the desire and wish of I. G. Chemie to sell this participation and to get the best possible price.

Q. Yes. Well, that you have told us already. But wasn't it that you were able to get Farben to buy it from you on the basis of a long-standing agreement by Farben that Chemie would suffer no loss?

MR. WILSON: I object to the question upon the ground that it is double-barreled.

MR. SCHWARTZ: I think the witness understands it very well.

MR. WILSON: That's all right, whether the witness
10113 understands it or not. The answer "No" could be a concession by the witness impliedly that there was a long-standing agreement.

THE MASTER: Well, I think you can ask the question directly, Mr. Schwartz: Was there such an agreement?

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. Wasn't there a long-standing agreement between Chemie and Farben, Mr. Sturzenegger, that Farben would see to it that Chemie suffered no losses on its Winnica investment? A. On this special investment?

Q. Yes. A. Not to my recollection. I don't know of any guarantee of that sort.

Q. Well, I am sorry if you thought I meant a written one. Wasn't there a long-standing oral agreement, an oral understanding, between Farben and Chemie that Farben would see to it that Chemie suffered no losses on this Winnica investment? A. Well, not to my knowledge. I mean the matter was, as I see it, along those lines, that this participation had been bought apparently on the initiative of I. G. Farben, and this fact, of course, I think, was pointed out to Farben, and I mean I must emphasize that I was not a

party of the discussions, but I think that this kind of a moral appeal was perhaps one of the motives given.

* * * *

10124 Q. Now, you note that this memorandum by Mr. Gierlichs is dated May 1942. A. I see it, yes.

Q. And that the sale took place in February '42, almost eight months or so thereafter. A. '43.

Q. I'm sorry, '43. That is May 1942 and that is February '43. Do you remember that negotiations with Farben pended for a good part of a year while financing was arranged? A. No, I do not remember that. I only remember that a rather long time before the actual sale it was the wish, it was the sincere wish of Chemie, to sell this participation.

Q. Taking the attachment, Mr. Sturzenegger, will you look at the figures, please. A. The attachment to —

Q. To Mr. Gierlichs' memorandum. I would like to ask you some questions about the facts and dates and so on. A. Yes.

Q. January 2, 1935, taking over of 247 old shares at
10125 zlotys 245,680.15. That refers, does it not, to the first 247 shares that Greutert bought in '35 for that sum of zlotys? A. I am not sure whether Greutert bought it at that time or already before, but it refers to this first parcel.

Q. I think you are right. It refers to the first parcel that was issued and sold to Greutert, and that was 247 shares. A. Yes.

Q. Right? A. I remember the number.

Q. And the zlotys you can confirm? I suppose that 245,000, a little more or less, was the price? A. Well, that I cannot remember.

Q. Approximately? A. I have no idea. That must have been taken from the books.

Q. And the January 2, 1935. Can you confirm that it was after they were sold and it must have been that payment was made some time after they were actually bought by Greutert? A. Well, I didn't get your question quite.

Q. I think you answered that you thought the shares were bought earlier than '35. A. Yes, by Greutert.

Q. Then can you confirm what seems to be the inference that they were bought before '35 but only paid for in '35?

A. No, that mustn't be the inference. I mean this
10126 attachment, although it is not clearly expressed, may refer to the acquisition of both parcels by I. G. Chemie, and not—

Q. I see. A. —of Greutert.

Q. And not purchases by Greutert. I think you are probably right. Do you think that is so? A. I think that is so.

Q. Well, doesn't that check with the SCO? They said Chemie acquired it in '35. That is right, so that confirms it. A. Yes.

Q. And Chemie bought both blocks from Greutert then at that time in '35? A. I think so.

Q. And Greutert had bought both blocks as they were issued prior to '35? A. Yes, I believe so.

Q. You can confirm, I suppose, that the total zlotys cost of the two was 1 million? A. Well, I think the figure is correct—

Q. All right. A. —but I have no independent recollection.

Q. Well, approximately 1 million. Don't you remember that it was approximately 1 million? A. It must have been around this figure, but I am not certain about it.

10127 Q. Now the SCO stated, if you remember, and you confirmed that, Chemie acquired the Farben interest for Swiss francs 584,099.15. Is that the Swiss franc translation of 1 million zlotys as of about '35? A. That may have been the case.

Q. Because the total cost when you compute it in Swiss francs at the foot— A. Yes.

Q. —is 1 million Swiss francs, and I realize there has been something in between. A. Sure.

Q. But that something in between doesn't account for the difference between 584,000 and 1,098,000. A. No, and of course the whole reckoning depends on the conversion rate.

Q. The year. A. Yes.

Q. So I am sure this—I don't want to make you think I am asking you something. I am pretty sure that the million zlotys was, at the '35 rate, 584,000 francs. A. Well, I cannot make a statement.

Q. I understand. A. I do not know what the relation to Swiss francs was in '35.

Q. I understand. But the SCO states that Chemie's cost

10128 was 584,000 Swiss francs. A. Yes. They must have taken that from the books.

Q. And you asked 1,000,000 Swiss francs and got 800,000, is that not right, when the time came to sell? A. Yes, according to that. I didn't remember that 1,000,000 was asked, but I had somewhat the recollection before, as I told you before, that more than this 800,000 was asked by I. G. Chemie.

Q. So there was a very large profit for Chemie in its sale of this interest, was there not? A. No, I couldn't say it. Because, of course, if you have a long-time investment and you do not get interest on it, or only a very small interest or only during a short period, then of course you must take into consideration in the reckoning an interest, an assumed interest, because if you had the money at your disposal you could make interest on it. So in order to fix your real price you must compute it together with interest. And—well, my recollection, though vague, is that in the whole transaction no gain was achieved.

Q. Well, I don't want to argue with you, but we have the basic facts. They will speak for themselves. You are clear, then, that you asked for more than 800,000 Swiss francs? A. Yes.

Q. And got 800,000. Are you also clear—you did say before that the cost to Chemie in '35 was 584,000 Swiss francs.

10129 That is what the SCO says. A. Well, according to the SCO statement—and I have no reason to dispute it, but I have no independent recollection about this.

Q. You confirmed it before. A Well, but I cannot remember really this figure.

Q. I don't mean the exact figure, but approximately a little more than 500,000 Swiss francs. You didn't mean to confirm that as the figure? A. Well, it is nearly six.

Q. Nearly six, yes, between five and six. A. And if you will—no, that is something I cannot make a statement on because really I have no recollection of these figures.

* * *

10136 Q. Now, you notice that these documents dated February 23 and February 24, the date after the contract with Discont-Credit, show that almost immediately on the sale to Discont-Credit there was a re-sale to Farben; right? A. Yes, according to those documents.

Q. Did you know at the time that it was the arrangement that the sale to Discont-Credit would be followed immediately by a re-sale by Discont-Credit to Farben? A. No, I do not think so.

Q. Did you know that it would be followed by a re-sale to Farben at some time? A. No. I mean, we were only interested to get the counter-value for the shares and didn't care about the internal construction of the loans or the arrangements between the Discont-Credit or Credit Suisse and I. G. Farben.

Q. But did you know that Discont-Credit on buying it from you would thereafter re-sell to Farben? A, We didn't know that. I mean we were not interested: If Farben, for instance, had asked Discont-Credit to sell it to another party, it would have been of no interest to us:

10137 Q. Then do I understand that you knew that Discont-Credit bought it for the account of Farben? A. Well, I think we assumed it, that I. G. Farben, in view of the previous discussion I told you already, was in some way behind it.

Q. You didn't, or did you—did you know at the time that the arrangement was such an arrangement as is here

shown, sale to Discont-Credit, delivery of the shares to Kreditanstalt to be held as security for a loan that Kreditanstalt was giving to Farben in the amount of 800,000? A. No, I don't think that I have ever known these details. I have seen them only from these documents.

Q. These documents don't refresh you at all as to that four-cornered arrangement? A. No, no.

MR. WILSON: He answered no, Mr. Schwartz.

By MR. SCHWARTZ:

Q. I call your attention to 393, the fourth-from-the-last full paragraph, which mentions Farben's name. A. 393, the fourth-from-the-last paragraph?

Q. Fourth-from-the-last paragraph, "The collateral to be furnished to us for this credit, Messrs. H. Sturzenegger and Company, Basle, handed over to us Reichsmarks 9,300,000 6 per cent bonds of your company." Do you see that? A. Yes, I see that.

10138 Q. Does that help you to recall more specifically that you transferred to Schweizerische Kreditanstalt some such sum of Farben bonds at about this time? A. No, I cannot recall it, but I do not dispute it. I mean, I think in some other deposition I was asked about the same question, a similar question, with respect to Farben bonds, and I believe to remember that some big parcel was delivered to Swiss Bank Corporation.

Q. I see. Swiss Bank is Schweizerische Bankverein? A. Yes. Now it appears that it really was delivered to Credit Suisse.

* * *

10152 Q. Do you remember in the early weeks of September 1939 Farben communicating to Chemie in any way that this matter of the appointment of Farben people to take charge of Polish dyestuffs plants was before a Reichs Ministry? A. No, do not remember that.

10153 Q. Do you perhaps remember it in connection with Mr. Gadow being asked about it? A. No. I have seen

from these papers, but I think that is much later, that once a request was made to him and apparently was declined.

MR. SCHWARTZ: Will the reporter please mark Document 24206 and 24211?

(The documents and translations referred to were marked for identification as Defendants' Exhibits 395-24206 and 396-24211, respectively.)

(The witness examined the documents.)

THE WITNESS: I have seen them, Mr. Schwartz.

MR. WILSON: Let me see the German text of 396.

By MR. SCHWARTZ:

Q. Do you remember some such a letter as this being received by I. G. Chemie in the early part of September 1939? A. After having read these documents I believe that something like that was received by I. G. Chemie.

Q. The request that you give them a power of attorney such as is the second document? A. Well, I'm not sure in my memory about the text, but something like that.

Q. Some such document? A. Yes.

* * * *

10167 Q. I would like to go back, Mr. Sturzenegger, to the original organization and operation of Winnica in the early '30's. Am I right you told us that Greutert first bought the investment at the instigation of Farben? A. I think so. May be Kuhlmann. But both Kuhlmann and Farben worked together.

Q. On that working together, it was the fact, wasn't it, that outwardly and publicly Kuhlmann was the complete owner of Winnica? A. I think so. That was the outward appearance.

Q. And the purpose of having it appear to be French-owned was, was it not, because Farben could not have an interest in a Polish firm because of Polish legislation about

German firms, customs or taxes or some such thing as that? A. Well, I have never occupied myself with the reasons of this matter, but it seems that both parties had thought it more advisable to appear under the name of the French participant.

Q. By "both parties" you mean Farben and Kuhlmann? A. Yes.

Q. But there was no reason why Greutert or Chemie should not openly own property in a Polish corporation?

10168 A. Well, I didn't get the last question.

(The reporter read the question as follows: "But there was no reason why Greutert or Chemie should not openly own property in a Polish corporation?") A. No, to my knowledge no reason.

Q. So that am I not right that you, in form, bought your stocks in Winnica from Kuhlmann but actually it was a purchase of the Farben interest in Win. ca? A. Well, how shall I put it? I think it was an agreement between Kuhlmann and Farben to jointly foster and develop this enterprise, and the participation—I mean the capital participation, shareholding, allotted to Farben in this agreement was at some time transferred to Greutert or bought by Greutert, and then sold to I.G. Chemie as you know.

Q. Can you tell us why Greutert should have chosen to invest its money in this Polish enterprise? A. Well, it was not my choice. I do not remember. I think it was a suggestion by either Farben or Kuhlmann. May be Farben.

Q. Also it was a fact, wasn't it, that both Farben and Kuhlmann operated Winnica in their joint interests? That is, they managed the entire affairs of the firm, did they not?

A. Technically, yes, I think so.

10169 Q. The board were composed of representatives of Kuhlmann? Am I right. A. Well,—

Q. Frenchmen. Or some Poles perhaps but— A. May be Poles.

Q. —but in so far that they were non-Poles they were

representatives of Kuhlmann? A. I think so, though I do not know the people.

* * *

10180 Q. Did you know that the number of employees of Winnica declined during those early war years? A. No, had no idea about such a thing.

Q. Skipping two paragraphs, there is a short paragraph further down, Mr. Sturzenegger, that says "the loss of 92,000

10181 zlotys for the business year 1940." Do you see a short paragraph beginning with "the loss of 92,000 zlotys"? A. Yes.

Q. Does that refresh you that you knew at the time that Winnica lost money in 1940? A. No, I have no idea. I only think that—I believe to remember that no dividends were paid during the war.

Q. I won't ask you about further points.

I suppose you didn't receive a copy of this report from Winnica trustees when it was written? A. No, certainly not.

Q. And having seen this report, does it refresh you that you received any information about Winnica during the war? That is, of its losses, operations, prospects, sales? A. I believe we got nothing at all.

Q. Do you remember that Chemie ever made any efforts to get any information about what was going on at Winnica? A. I do not remember. I don't think they did much.

Q. You remember that they did not make efforts? A. Well, at least I cannot recall.

Q. This document talked of the purpose of Farben having founded Winnica having something to do with import duties. I would like to call your attention to another statement of the purpose of Farben. This is from the judgment of the tribunal at Nuremberg, and it says that Winnica was

10182 ostensibly owned by French interests. That you have confirmed? Right? A. Yes.

Q. But in reality there was a secret 50 per cent owner-

ship in Chemie of Basle. That's right? The ownership by Chemie was secret, was it not? A. Well, at least more or less. I mean in so far that I think the interest was always during a long time represented by Kuhlmann, the French party.

Q. Represented by Kuhlmann? A large number of the shares were actually deposited with Kuhlmann, were they not? A. Yes, sure.

Q. It was not in Chemie's balance sheets? A. Yes, there were.

Q. I mean in Chemie's annual reports. So there was no publicity— A. No, that's no reason, I think, even if—

Q. First the fact. It was not in Chemie's annual reports? Is that right? A. No, but only I would like to ask that we not proceed to draw conclusion from that. It was not in Chemie's balance sheet not because of this fact but I think of the minor importance of this item. Normally in the report were only named the two or three most important participations, as the G.A.F., Norsk Hydro, maybe Durand & Huguenin formerly.

10183 Q. Yes. When we mentioned this once before—I would like to correct myself on that—I suggested to you that Chemie had never put in its annual reports its investments other than General Aniline, Norsk Hydro and the Durand & Huguenin. A. Yes.

Q. I left one out. Chemie put in Teerfarben, did it not? Teerfarben, Zurich was, during the years that Chemie owned it, in the annual reports I think. A. I don't think so.

Q. I may be wrong. I hadn't wanted to mislead you— A. I don't think so. At least not normally.

Q. At any event there weren't more than three or four? A. Two or three.

Q. General Aniline, Norsk Hydro and Durand & Huguenin? A. Yes.

Q. The fact is the ownership in Winnica was not in the annual reports? A. No, but in the balance sheet.

Q. The conclusion we can leave for the future. You say it was in the balance sheet? A. Yes, to my recollection.

Q. That was not publicly printed or circulated? Am I right? A. Yes, the balance sheet, of course, was printed but

10184 condensed.

Mr. Wilson: No breakdown of the participations?

The Witness: No, of course not. Never.

Mr. Wilson: Just as is usual anyplace?

The Witness: Absolutely in Switzerland.

The Master: Well, you had written it down to a single franc, hadn't you?

The Witness: I do not know.

Mr. Schwartz: Throughout the years that Chemie issued annual reports I mean.

Mr. Wilson: A balance sheet doesn't state individual participations, not even an American balance sheet.

Mr. Schwartz: I am only trying to establish the fact, Mr. Wilson.

Mr. Wilson: Yes, but I don't like it to be excluded on the ground it was only worth one franc.

The Master: That was merely a thought that occurred to me in addition to the other factors.

Mr. Schwartz: To make the fact clear, Chemie owned this from about 1935 to 1942 or 1943,—

The Witness: That's right.

By Mr. Schwartz:

Q. —and in none of those years in its annual report did the name Winnica appear? A. That's correct.

10185 Q. As an investment? A. That's correct.

Q. So I think you agree it was secret more or less? A. Yes, but not because of the fact—

Q. I'm only establishing the fact. The reasons Mr. Wilson can ask about.

* * *

10231 Q. To change the subject, Mr. Sturzenegger, I would like to ask you some questions about Mr. Mollwo's holdings of Budanil shares. Mr. Mollwo was, of course, a partner in your firm until he went over to Lausanne to run—what was it? A. Not—I think he went to Lausanne in 1938 if I am not mistaken, but he was not in the technical sense partner.

Q. Oh. He was a senior officer of your firm? A. Yes.

Q. And thereafter and even until his death, which I think was in 1948, he still continued to occupy himself at least partly with the affairs of your firm? Isn't that right?

10232 A. Well, he occupied? I'm sorry.

Q. After 1938 and until his death, which I think was 1948— A. I believe so.

Q. —he continued to occupy himself at least partly with the affairs of your firm? A. No. I mean your statement is only insofar correct as we were in touch, and no doubt many matters were discussed between us. We remained on friendly terms.

Q. Yes. Well, the company he was running was substantially a subsidiary of your firm, was it not? A. Not in a technical sense. It was—

Q. But your firm owned—I forget what it was, but— A. My firm owned participation indirectly by way of Perpetua, but the majority was in his hands.

Q. I see. And hadn't you told us earlier that the relationship between you two was such that he might have looked in your files and found out things in your bank's files even after he left? A. Well, as matters are sometimes handled in a very informal way, but he was not entitled to do it. Certainly he had no right to do it.

Q. At one time wasn't he also an officer of Chemie? An auditor? A. He was an auditor of Chemie; that's right.

10233 MR. WILSON: When was that.

MR. SCHWARTZ: That's in the record somewhere.

By Mr. Schwartz:

Q. But you can tell us when that was? A. Well, I think it was, if I'm not mistaken, until his death, but, well, we must see from the printed reports. I'm not sure about it.

Q. Now, Budanil, am I not right, was a Hungarian sales company for I. G. Farben? A. Yes.

Q. Similar to Romanil and Athanil and Chimicom in the sense that they were all sales agencies for Farben's products in various countries? A. Well, I'm not and was never acquainted with this Budanil Company. I think I didn't know much more than the name.

Q. And the SCO reported, or Mollwo reported to the SCO and in the SCO statement it appears that Mollwo held a part of the shares of Budanil in trust for Farben? A. That's correct.

Q. And I think you told us that you knew this at the time in the early '40's I think you said or before. A. I remember that he once informed me of the fact.

* * *

10244 Mr. Schwartz: Will the reporter please mark Document 3990. It consists of three pages. Please mark them as a, b and c. And the translations.

(The document and translation referred to were marked for identification as Defendants' Exhibit 421-3990-a, 421-3990-b, and 421-3990-c, respectively.)

10245 (The witness examined the document.)

By Mr. Schwartz:

Q. You needn't read them too carefully, Mr. Sturzenegger. A. I see.

Q. You can identify the signature, of course? A. Yes, the signature of Mollwo.

Q. You have seen even in the reading you have done that they relate to Mollwo's holding of Budanil shares for Farben and acknowledge a loan he had received and made irrevocable offer of sale. A. Yes.

Q. And it's dated 1932? A. Yes.

Q. When did you first know that Mr. Mollwo held such shares for Farben? A. Well, I'm not sure about it.

Q. About? A. Sometime in the '30's but—

Q. Did his business in connection with Budanil ever come to your attention in the Greutert firm? A. Well, I do not quite get the sense of your question. In connection with what you said?

Q. I'm sorry. Did you ever learn about any business he had, any transactions, any dealings, any meetings, any
10246 offers, any matters at all that he had in connection with Budanil while you were associated in the Greutert firm? A. No, I just, as I told you, remember that he once mentioned the fact that he held in a fiduciary manner certain stocks in Budanil.

Q. But did his activities as such a fiduciary ever come to your notice? A. Well, at least I cannot recollect. I mean the principal fact probably yes, that he held those shares or a certain block of shares in a fiduciary quality for I. G. Farben. That I knew.

MR. SCHWARTZ: Will the reporter please mark Document 3991 in two parts, and I will mark them a and b.

(The document and translation referred to were marked for identification as Defendants' Exhibit 422-3991-a and 422-3991-b, respectively.)

By MR. SCHWARTZ:

Q. I am just going to ask you about the signature on that, but please look at the whole thing.

(The witness examined the document.) A. Both documents I recognize the signature of Mr. Mollwo.

Q. All right. Thank you.

MR. SCHWARTZ: Will the reporter please mark Document 5014.

10247 (The document and translation referred to were marked for identification as Defendants' Exhibit 423-5014.)

By MR. SCHWARTZ:

Q. And I am going to ask you the same question, Mr. Sturzenegger. A. Yes, no doubt the same signature, Mr. Mollwo.

Q. You notice that one is about Defa, about which Mr. McGraw asked you some questions, but that document he did not show you. A. I see it refers to Defa.

Q. If you remember, you identified his signature on other documents in connection with Defa—sales offers and so on. A. I believe so.

Q. I only say that not to shock Mr. Wilson with any retracing the same steps.

MR. WILSON: You know, I don't remember that.

MR. SCHWARTZ: Well, for your information, I can give you a summary of th testimony.

MR. WILSON: Off the record.

(Discussion off the record.)

By MR. SCHWARTZ:

Q. Do you know where Mr. Mollwo's shares were physically deposited? In Budanil I am referring to.

10248 A. No.

Q. Did you know that they were deposited in the Laenderbank and that only Farben had access to the safe-keeping box? A. No, do not know. Was never acquainted with these facts.

Q. Did you ever know of a problem that Mr. Mollwo had with respect to his blocked dividends in Bucharest, in Hungary, and that he ceased collecting those dividends because he could not assert that he was the sole owner of the shares? A. Well, it's very vague. May be that he has once mentioned such a thing. I'm not sure about it.

May I add that I remember the whole matter—I mean these two fiduciary holdings of Mr. Mollwo—I think especially in connection with this census of German property where he consulted me and discussed it.

Q. He declared it? A. He declared both in due time and correctly.

Q. He discussed it with you at the time he declared it? A. Yes. At least I think I remember he mentioned it.

* * *

10255 By Mr. McGraw:

Q. Mr. Sturzenegger, when we touched on the subject of Chehamij the other day, you recalled that Basle had agreed to have Parta participate in a capital increase to the extent of one-fourth in Chehamij. A. Well, under what conditions it was agreed I do not remember. That it was made that Parta made this participation, that is correct.

Q. Do you recall the statement you made that Basle reluctantly agreed that Parta would share one-fourth in the capital of Chehamij? A. Yes.

Q. And when you said "Basle" you were speaking of Chemie, were you not?

10256 A. Yes.

Q. And when you said, "We were requested," you meant you were requested by Farben officials? A. Yes.

Q. Can you tell us something about the negotiations which took place with Farben officials early in '39 concerning this Chehamij affair, Mr. Sturzenegger? A. Well—

Mr. Wilson: All this was covered the other day. I object to it.

The Master: I don't recall it along this line. Do you mean this precise question?

Mr. Wilson: No, the subject matter.

The Master: Well, he mentioned Chehamij and capital increase.

Mr. McGraw: And dropped it; that was all.

Mr. Wilson: No, the testimony went along as to the

reasons why Farben's selling companies were taken out of Voorinda and put into Chehamij.

THE MASTER: Well, he is trying to get the background of it, Mr. Wilson. I think it is permissible.

MR. WILSON: I think it will be demonstrated very quickly it is repetition of what we had.

THE WITNESS: May I please ask that the question be read.

(The pending question was read by the reporter as follows:

10257 "Can you tell us something about the negotiations which took place with Farben officials early in '39 concerning this Chehamij affair, Mr. Sturzenegger?")

THE WITNESS: I see. Not much more than what I had told you. I mean I do not recollect the details. I remember, on the other hand, that there were two elements. One was, as I had stated before, the wish of Basle to have Voorindu as much as possible relieved from certain already-mentioned fiduciary tasks or matters in some connection with I. G. Farben. On the other hand, I. G. Farben had mentioned, or some Farben people—I do not recollect now who it was, and I do not recollect neither the occasion—that in connection with reasons I tried already to outline they were planning to concentrate certain interests in selling companies and so on in a Dutch company. And I remember that in this connection we, or some of us, were, in view of the old good business connections, asked to participate in the capital of such a company.

By MR. MCGRAW:

Q. When you say "we or some of us," Mr. Sturzenegger, to whom are you referring?

MR. WILSON: I object to the question. I direct the Master's attention to the fact that on Monday, April 3rd, in relation to Exhibit No. 373-11035, that exact subject matter was testified to almost in these words. —

THE MASTER: Well, I have got to assume, Mr. Wilson, that

10258 he is not wasting our time by going over—

MR. MCGRAW: We are going into another angle of this, your Honor, and I just asked him to clear up the last answer, "we or some of us." I would like to have him make it clear to whom he is referring.

THE MASTER: What is the number of that exhibit?

MR. WILSON: No. 373-11035. That was from Farben to the Reichs Ministry of Economics, July 24, 1939, a lengthy letter having to do with the program of transferring the sales companies of Farben, or some of them, out of Voorindu and into Chehamij.

On that occasion Mr. Sturzenegger, in answering part of the questions, used the phrase, "Basle wanted Voorindu to be relieved of Farben's fiduciary commitments." Now, that is exactly what he is testifying to now.

THE MASTER: Yes, but I have got to assume, Mr. Wilson, that he is as aware of that as you are and he intends to bring something further out by way of refreshment or otherwise. Is that so, Mr. McGraw?

MR. MCGRAW: It is so, your Honor.

THE MASTER: In other words, it is a preliminary matter at this stage, isn't it?

MR. MCGRAW: Certainly.

THE WITNESS: I'm sorry, I forgot the last question, Mr. McGraw.

10259 By MR. MCGRAW:

Q. I simply asked you to—

THE MASTER: —identify the Basle companies, which ones.

THE WITNESS: I see. I am only sure that I, certainly, was asked, too, once—I do not remember the occasion; I mean when the subject was touched first. I think that Mr. Greutert or Mr. Gadow or Mr. Roesch—but I have no recollection of that—may have been asked, too.

MR. MCGRAW: I hand to the reporter for marking a copy of our Document No. 11084, and the translation thereof.

(The document and translation referred to were marked for identification as Defendants' Exhibit No. 425-11084.)

MR. MCGRAW: Will you read the exhibit, MR. Sturzenegger.

(The witness examined the document.)

THE WITNESS: I have read it, Mr. McGraw.

By MR. MCGRAW:

Q. You did recall attending this meeting in Berlin, did you not, Mr. Sturzenegger? A. Yes. I think that is an internal note of some I. G. Farben people which refers to a discussion I had in mind when I was questioned before.

Q. You see the memo has the name of von Meister typed on there. Do you know von Meister? A. Yes, I know him,

10260 Q. Do you know what his position was in August 1939? A. Not exactly. I think he was connected to Zefi. At least, I have met him always, on the two or three occasions I have met him, I think there.

Q. Well, would you say this memorandum, Mr. Sturzenegger, is an accurate report of the meeting on August 2, 1939? A. Well, there are different details which I do not recollect, but I mean roughly speaking there are other facts which coincide with my recollection. I mean that the participation of Parta was discussed, that the dividend guarantee was discussed. That I remember clearly. I mean there was probably a short survey on the question of the transfer of these investments and options to Chehamij, but that is only a recollection as to the general line. I mean I cannot recollect these details contained.

MR. WILSON: Mr. McGraw, I call your attention to the fact, as you probably know, that whereas the text of the memorandum indicates that Mr. Brumm was present, the list of individuals present does not include him.

MR. MCGRAW: That is what I am going to ask him, Mr.

Wilson. I thought at first it probably was a mistake, that they meant Brehm, but they say "Mr. Brumm, Basle."

THE WITNESS: Yes.

By MR. MCGRAW:

Q. Do you recall whether Mr. Brumm was at this meeting,

10261 Mr. Sturzenegger? A. Not to my recollection; I don't believe it. I am not certain about it. I don't think so.

Q. Do you see the list of those present at the beginning of the memorandum, Mr. Sturzenegger? A. Yes.

Q. Mr. Brehm at that time was manager of Mapro, was he not? A. I believe he was.

Q. Van Meer was mentioned the other day as one of the managers of Koopmansbank. A. That is van Meer. Well, I think that the head man, the principal manager, was no doubt Fritze, but van Meer was next to him, I think.

Q. Well, van Meer became the so-called head man in 1940 after Fritze left for the United States, did he not? A. Well, we had seen that, I think. I didn't know that at that time.

Q. Dr. Secherling you mentioned the other day as a young attorney. A. That's right.

Q. Dr. Krueger? A. Certainly. I know him well.

Q. In 1939 Krueger was the deputy head of the entire Central Finance Administration?

10262 A. Well, I am not acquainted with the organization. He no doubt was in a high position in the Central Finance Verwaltung. On the other hand, to my recollection, he has never been a member of the board of I. G. Farben. He was one of the managers, of the many managers.

Q. Von Meister we just mentioned. A. Yes.

Q. Henze you were well acquainted with, were you not? A. Henze was a young lawyer, I think kind of assistant to Gierlichs or working with Gierlichs.

Q. And Gierlichs was in the Finance Sekretariat Section of Zefi? A. Yes, as a lawyer.

Q. Von Soiron, the last name on the list there, Mr. Stur-

zenegger—do you recall that gentleman? A. No, I have no idea. I don't recall him.

Q. Does the statement in the first paragraph that at the beginning Dr. Krueger discussed the way in which the shares or participations of the sales companies or the options respectively were to be transferred—does that recall anything to you about Krueger's statement at this meeting? A. No, just that he—and I think he was, too, the man who conducted this conference; it was an informal conference, I think—that he made some general statements about the whole matter, expressed some ideas and views and so on.

What he said

10263 I cannot remember.

Q. In connection with the statement that Dr. Krueger discussed the position of the managers and of the members of the supervisory board of Chehamij, do you recall anything in connection with that statement, Mr. Sturzeneger? A. No; only, though it is rather vague, I think that Dr. Veenstra was taken into consideration as a leading man—not Veenstra; I mean van Meer.

Q. Van Meer? A. Yes; excuse me. Well, I cannot remember.

Q. Do you recall that they mentioned that Mr. Brehm would be the manager of Chehamij? A. That they had? Yes. Well, whether the manager—yes, I think that he should be connected with the work in this connection.

Q. Didn't Veenstra later become a member of the board of Chehamij? A. You think during the war?

Q. I am asking you whether you know whether he did later become a member of the Chehamij board, sometime after August 1939. A. No, no; I do not recollect it, at least.

Q. You do not recall that Brumm was present? A. No, I don't think he was present.

Q. Will you look at the paragraph there, Mr. Sturzenegger,

10264 in which they mention the discussion on the guarantee of dividends. A. Yes.

Q. Do you recall anything about the discussion that they refer to here? A. Yes, I recall that, as I told you before, the Basle people had in principle only agreed to make a capital contribution in this Chehamij on the condition that it should be a sound investment, and therefore have a dividend guarantee, and that the rate, the minimum rate, was 6 per cent stipulated I remember as well, and that, well, it was made in such a way that the dividend guarantee went formally to a notary public, Dr. Christ, in Basle. That I remember as well.

Q. Was Dr. Christ suggested by you as the notary in whose favor the guarantee would be made out, Mr. Sturzenegger? A. That well may have been. I think it was along those lines, that Parta wouldn't have minded a direct guarantee. I think, on the contrary, that would have been the simplest way. Then I think undoubtedly I. G. Farben didn't like it; they preferred another solution, a guarantee to a neutral person or so.

Q. Was Basle a neutral? A. No, Dr. Christ was. I mean, that is perhaps more a conclusion from the documents I have seen. They wanted just—Parta wanted to have a guarantee because Parta considered
10265 it just as an investment, and I think Farben didn't like a direct guarantee to them. So such a solution was discussed and finally chosen.

Q. Is it your recollection that the guarantee was given solely to Parta, Mr. Sturzenegger? A. Well, we were only interested, I think, as to Parta. It may be that the guarantee was, and I think so, given generally in favor of the shareholders.

Q. Weren't you also interested in the guarantee from the point of view of Mapro at this time? A. Well, not so much. I don't think that we thought of that. Our direct investment was not a very large one.

Q. But as of this date, August '39, you were a shareholder in Mapro, were you not? A. We were.

THE MASTER: By "you" you mean?

MR. MCGRAW: His firm.

THE MASTER: Sturzenegger.

THE WITNESS: Well, what is the date?

By MR. MCGRAW:

Q. August '39. A. I think we were then.

Q. Do you recall an agreement at this meeting that the shareholders would not receive any dividends higher than 8 per cent?

10266 A. It may be that some limit was discussed. I think so.

Q. I call your attention to the next paragraph, Mr. Sturzenegger. It reads in my translation: "Larger net profits of Chehamij are to be used for the creation of reserves, and all agree that these reserves, though not legally, but economically, belong to the I. G."

Does that recall anything to you about a discussion on the reserves of Chehamij? A. No. I remember more another suggestion mentioned in this document, namely that if the larger income should be derived—not "derived" but should be made by Chehamij, flow into Chehamij—that that should be used in the first place to reduce the indebtedness towards the Scandinavian bank or the Scandinavian loan given. That I vaguely recollect.

Q. You don't recall whether you agreed at this meeting that the reserves of Chehamij would belong to Farben? A. No, I do not recollect that.

Q. Do you recall whether that was mentioned at all? A. Not in this way. I recall that, as I told you, I think it was pointed out by Krueger that, well, if the Chehamij shareholders—that referred to Parta especially—got 6 or, as was hoped, 8 per cent, that that should be a nice investment and that should be enough, something like that.

Q. In return for this guarantee you agreed on behalf of

10267 Parta that it would not take a part in the management of the business? A. Well, yes. Well, whether it was agreed, it was always understood.

Q. That it would not interfere with the operation of the company? A. There was no formal obligation. Parta was a minority shareholder and this capital contribution was only taken into consideration as an investment and as a friendly gesture in view of the old business connection which couldn't be well declined.

Q. In the next paragraph, Mr. Sturzenegger, there is mentioned that the funds at the disposal of Chehamij are to be used for repayments on the Swedish credit. A. Yes.

MR. WILSON: He just testified to that, Mr. McGraw.

THE WITNESS: That is what I referred to, that I remember.

By MR. McGRAW:

Q. Did you know that at the time of this meeting, Mr. Sturzenegger, Farben had already completed negotiations with the Swedish bank for the granting of this credit to Chehamij? A. Well, I think it was at this meeting—I mean this was the first occasion I learned that the means which were mainly intended to finance the Chehamij business were provided through some Scandinavian Bank. But how now these

10268 arrangements were I don't know. I thought it was—I think I was under the impression that is was just a Swedish credit in favor of Chehamij that had been negotiated before.

Q. At this time, Mr. Sturzenegger, Chehamij was only in the formative stage, was it not?

MR. WILSON: You mean as a corporation?

MR. McGRAW: No, I mean as to the activity of the corporation, Mr. Wilson.

THE WITNESS: I think so, yes.

By Mr. McGraw:

Q. In the next paragraph, Mr. Sturzenegger, is the statement, "The request of Dr. Sturzenegger to have Parta A. G. share with 25 per cent is to be complied with." That confirms your recollection that you agreed to have Parta take the ¼ interest in Chehamij? A. Well, it refreshes me in so far only from the document it could look—and that would be an entirely wrong impression—that it was the wish, original wish, of Parta to make such an investment. I mean that is not a fact. It may be that just this sentence refers to the percentage or so.

Q. I was curious about that because if you will recall, in the document I showed you the other day Farben suggested that Parta and Kantoor would have equal participations in Chehamij.

Then in the next paragraph, Mr. Sturzenegger, "Mr.
10269 van Meer points out according to the Dutch law the company may acquire up to 50 per cent of its own shares which perhaps may be of importance some day for the participation of Kantoor." A. Well, that is a detail I do not recollect at all.

Q. That doesn't help you to recall anything about Kantoor? A. No.

Q. Does it help you to recall anything about the significance of his statement with respect to Kantoor? A. No; no, it doesn't.

Q. Do you recall, Mr. Sturzenegger, why the agreements reached at this meeting were not put in writing? A. Well, I wonder why they should have been put more in writing than they were. I mean, I remember that the guarantee was put in formal writing, no doubt. And I do not—I mean I cannot make sense out of this remark. It was just a conference where these matters were disgussed and some consequences drawn and some matters arranged accordingly.

Q. Do you recall whether there were any other agreements

reached at this meeting which are not reported in this memorandum? A. No, I don't recall such a thing.

Q. In the last paragraph, Mr. Sturzenegger, you will note a reference to an application Farben had made to the German Government to carry out the Chehamij transaction.

10270 A. No, that I do not recall. I mean that concerns the Farben side and we didn't care about it at all.

Q. Do you know that the government was very reluctant to approve this transaction? A. No. I have learned that from some documents.

Q. Parta subsequently became a shareholder in the company, did it not? A. That is correct, yes.

MR. MCGRAW: I hand to the reporter for marking a copy of our Document No. 25165 and the translation.

(The document and translation referred to were marked for identification as Defendants' Exhibit No. 426-25165.)

By MR. MCGRAW:

Q. I hand you our Exhibit No. 425, Mr. Sturzenegger, and ask whether that confirms that Parta paid in 55,000 florins to Chehamij on or about October 1939. A. I do not remember the date, but as to the fact that such a sum was paid in, I believe that is correct.

Q. Parta held the 55,000 florin participation up until the time the company was transferred to Mr. Kuehnlein in 1944? A. That is correct.

MR. MCGRAW: I hand to the reporter for marking our Document No. 11398, Part 1, and a copy of the translation thereof.

10271 (The document and translation referred to were marked for identification as Defendants' Exhibit No. 427-11398(2)-1)

By Mr. McGraw:

Q. Dr. Sturzenegger, do you recall some discussions you had with Mr. Kuepper and Mr. von Rospatt of Farben concerning the wording of the dividend guarantee? Do you recall that? A. Rospatt and Kuepper? I cannot remember that: I remember, on the other hand, that there was some discussion about the matter. I think so.

Q. Do you recall that a draft was submitted to you for your approval? A. I think so.

Q. Will you look at our Exhibit No. 427, Mr. Sturzenegger.

(The witness examined the document.)

The Witness: I have read it, Mr. McGraw.

By Mr. McGraw:

Q. Do you recognize the document, Mr. Sturzenegger, as a copy of the agreement which was sent to Christ by Farben? A. No, I cannot recognize it. I have no recollection about the details. It may be.

Q. Would you say that document contained substantially the terms of the agreement regarding the payment of the dividend guarantee?

10272 A. I think so.

Q. That Farben would pay 6 per cent to the shareholders or an amount to bring their investment up to 6 per cent in the event Chehamij paid at a lower rate? A. Yes. I mentioned to you I remembered the rate of 6 per cent as being the rate agreed upon.

Q. Did you know, Mr. Sturzenegger, that all during the war Mr. Christ made claims against Farben on behalf of Parta for the sums due under this guarantee? A. Well, I am not certain whether he has done it throughout the war, but I believe to remember that he tried several times to get this sum guaranteed from I. G. Farben.

Q. Do you know that Farben made payments to Christ on behalf of Parta as late as 1944? A. I don't know, or don't

remember, how long it continued. I remember that some payments were made under this guarantee.

Q. Do you know that Farben justified these payments to its government as necessary for the protection of its foreign properties? A. No, that, of course, I do not know. It was an internal matter of I. G. Farben how they got the permission.

10276 Q. Do you recall any problems that Farben had in connection with making the dividend guarantee payments to Parta? A. Your question is if I know what problems they had—please, may I ask the reporter to read the question.

(The question referred to was read by the reporter as follows: "Do you recall any problems that Farben had in connection with making the dividend guarantee payments to Parta?")

THE WITNESS: No.

By MR. MCGRAW:

Q. You note the last sentence of Exhibit 429 says, "As regards the practical carrying through of the matter, Dr. Krueger and Mr. Gierlichs will contact you," meaning Christ. Does that

10277 help you to recall anything about any difficulties that existed at the time? A. No, not at all. I mean the quite general difficulties for making payments to foreign countries were always, of course, they ought to have permission in Germany to make such payments, but that was an internal matter, up to I. G. Farben.

Q. Do you recall whether Farben made any suggestions to Parta that they waive their claim to the payments under the dividend guarantee? A. That may have been the case, but apparently it was paid. That means Parta probably insisted on paying of the guarantee, or Christ insisted.

Q. Do you know whether Farben made any other sugges-

tions for compensating Parta in some other way, than a payment in Swiss francs? A. Not to my recollection.

Q. Will you look at our Exhibit No. 430. Does this document help you to recall, Doctor, from your discussions with the Farben officials that Farben attached great importance to securing its influence on Chehamij? A. Well, I mean the fact that this whole set-up was initiated by I. G. Farben for tax and securing reason—that makes it clear that of course Farben had in some way a great interest in it.

Q. The heading of the document there is translated:
10278 "Measures for Securing Our Share Property Abroad." Is that the correct translation? A. Where is this sentence?

Q. The caption of the letter here. A. That is all right. That is a right translation, correct translation.

* * *

10332 By Mr. Schwartz:

Q. Mr. Sturzenegger, I would like to discuss with you
10333 Romanil, and that will make the third of the three that sound alike. We have discussed Athanil in which the gentleman Bertram and the others were involved. That was the one in which Mr. Greutert and you were involved. Budanil was the one—A. Mollwo.

Q. —in which Mr. Mollwo was involved. And Romanil makes the last. The SCO, if you remember, said as follows: The company is a selling—well, first, the full name was Romanil—something—something, Bucharest. It's Rumania? Right? A. Yes.

Q. And then it said substantially this, did it not? And will you confirm the facts for me, please?

The company is a selling company of the I. G. Farben. A. I think so.

Q. Its capital amounts to lei 5,000,000. A. Well, I have seen it from the document. I think that's right.

Q. In 1938 E. Greutert, Basle, held 1500 shares in trust for the I. G. Farben. A. Yes.

MR. WILSON: When was that?

MR. SCHWARTZ: 1938 it said.

By MR. SCHWARTZ:

10334 Q. Let me digress from the text for a moment. Do you remember what the total number of the shares were or what percentage of the total this 1500 was? A. No, but I think both figures you have given me are at least to my recollection correct. I mean the capital I have in mind vaguely was 5,000,000 and the participation in question 1500.

Q. Right. But you see there is no relationship between the two. Do you remember, for instance, that it was 5,000 shares capitalization, each 1,000 lei, which would make the 1500 shares about 30 per cent of the capital or a million and a half lei? A. Well, I have never thought in these figures, but you can reckon it out this way.

Q. It requires the extra fact of 5,000 shares, you see. Do you have any recollection of what the percentage held by Mr. Greutert and yourself was? A. No idea.

Q. Or what the nominal value was of that block of 1500 shares? A. I think it was 1,500,000 lei.

Q. Right; good. That's what I was asking you. Thank you.

When Greutert died, Dr. Sturzenegger took over this function as trustee.

10335 A. (The witness nodded affirmatively.)

Q. Is that right? A. Yes.

Q. Then they say that no further connection exists and particularly there is no connection between Roinahil and the I. G. Chemie. You tell me if anything is wrong from here on.

We were punctually informed of this trust relationship by Dr. Sturzenegger.

The blocked credit in the name of Sturzenegger & Cie., which has already been mentioned, and which was given to

Romanil, dates from 1931. A. Well, I do not recall from what date it dates, but I remember quite well this credit, and I remember the winding-up transactions we have already discussed.

Q. All right. I am not going to ask about that now. The other day I asked you if you knew the name of a Richard Schlatter, and you thought no. Do you remember that name Schlatter, Richard Schlatter, in connection with Romanil? A. No, I cannot recall the name.

Q. I asked you about Hermann Seebohm, and you told us something about him. A. Yes.

Q. Do you remember his name in connection with Romanil? A. No. I remembered it only in this transaction and where you refreshed me by this document. I mean this

10336 loan we had and matters connected with that.

Q. Do you know either in connection with Romanil or any other respect a person named Jean Daniels? A. Not to my recollection.

Q. A person named Paucker? A. Cannot recollect such a name.

Q. Does it help you to think of either Schlatter or Paucker or Daniels as clients of your firm? A. No, I don't think they were.

Q. By "your firm," of course, I mean your bank. A. Of course. The Greutert firm. No, I don't think they were.

Q. The name of Poppi? Does that mean anything for you? A. No, doesn't mean anything.

Q. Either in connection with Romanil or a client of your firm? A. Neither.

Q. The name of Cornelio Frueh? A. This name I remember.

Q. In what connection? A. I believe that once proxies in this Romanil matter, proxies for these shares held by Mr. Greutert in a fiduciary capacity, were made out to Cornelio Frueh.

Q. I see. Do you remember about when? During

10337 Mr. Greutert's time as trustee of the shares of Romanil or your time? A. I think during Mr. Greutert's time. I think so.

Q. So it was Mr. Greutert making out the proxies and not you? A. Yes, but I believe to have seen that not in your documents but as independent recollection from Greutert.

Q. Does the name mean anything as that of a client in your firm? A. No, I don't think he is.

Q. Do you know when Romanil dates from as a corporation? A. I didn't know it, but apparently it goes far back. I think this fiduciary holding of Mr. Greutert existed already when I entered the firm. I believe so at least. I'm not certain.

Q. Let me ask you about another two names. Mr. Frederick Schaeffer. A. No, cannot remember.

Q. Neither in connection with Romanil nor as a client? A. Nor as a client. I don't remember the name.

Q. Mr. A. L. Hoepfner? A. No, cannot—I mean I may have read such a name once. Cannot remember in what connection. To my recollection he has never been a client.

10338 Q. Does the name of Mr. Boissevain mean anything to you in connection with Romanil? A. No, except for what we I think on another deposition day have seen from some chart, haven't we?

Q. As Romanil? I think not. A. I must mix it up with some other company.

MR. WILSON: Didn't you ask him that yesterday?

MR. SCHWARTZ: I asked about Boissevain in Budanil.

THE WITNESS: Yes, I have mixed that up. I thought it was—

By MR. SCHWARTZ:

Q. More names, Mr. Sturzenegger, please. Mr. Alfred Beck. A. Cannot recollect.

Q. And I'm assuming that you will think of it in terms of both Romanil or a client of your firm. A. Sure.

Q. Mr. Richard Mayer? A. No, the same.

Q. Mr. Carl [illegible]nopf. A. No.

Q. Mr. Hans Bauer. A. No, neither.

Q. Mr. Radu Romanescu. A. Don't know.

10339 Q. Mr. George Petrescu. A. No.

MR. SCHWARTZ: Will the reporter please mark Document 11274.

(The document and translation referred to were marked for identification as Defendants' Exhibit 469-11274.)

By MR. SCHWARTZ:

Q. Will you just identify the signature, Mr. Sturzenegger? A. Yes, the signature of Eduard Greutert.

Q. Mr. Greutert was also on the board of Romanil, was he not? A. I believe so.

Q. And you recall we had an Exhibit No. 278, a letter of Mr. Greutert's in 1938 saying that he was quite willing to resign from the board of Romanil and Athanil; that he had served for ten or six years— A. Yes, I remember that.

Q. I just wanted to refresh your memory. Did you go on the board—

MR. WILSON: Wait a minute, will you? Maybe there is a simple answer to this, but this is dated September 9, 1939.

MR. SCHWARTZ: That must be a slip.

MR. WILSON: Mr. Greutert was dead, and the date isn't

10340 shown on your photostat, the year date.

MR. SCHWARTZ: Well, you see, it was cut off on the doing. I'd be glad to leave that blank until we can verify it.

MR. WILSON: It was down here.

MR. SCHWARTZ: Let's leave that blank.

MR. WILSON: He died about the 6th, didn't he?

THE WITNESS: No, the 9th.

MR. WILSON: Then it might be.

THE WITNESS: Could have been his last signature.

MR. SCHWARTZ: But since it's not on the original, I would be glad to leave it blank and we can verify it from the original in Germany, Mr. Wilson.

MR. WILSON: I don't want to be making a point about it. Was he conscious on the last day of his life?

THE WITNESS: Sure. He had a stroke, died quite sudden.

MR. SCHWARTZ: There isn't anything to do about it except look at the original again.

MR. WILSON: That is—

MR. SCHWARTZ: It's the only copy of either photostat or translation we have in this country.

MR. WILSON: It may be all right.

MR. SCHWARTZ: Are there not two dates? One is a stamp and one is a postmark. Isn't that stamped received September 11, 1939?

10341 THE MASTER: That makes the 9 date look like the correct date.

MR. SCHWARTZ: The translation shows a receiving mail stamp.

MR. WILSON: Is that what that little thing up there is?

MR. SCHWARTZ: Well, the translator purports to say that is the incoming mail stamp on the document in the Farben file. That too can only await looking at the original, and that says September 11th.

THE WITNESS: Which date?

MR. SCHWARTZ: 1939, which is two days by mail.

MR. WILSON: Have you by any chance got Farben's letter of the 6th?

MR. SCHWARTZ: No, we do not.

By MR. SCHWARTZ:

Q. Now, Mr. Sturzenegger, almost immediately after his death you were approached by Farben and asked whether you would replace him as trustee, were you not? A. I don't remember whether it was immediately after his death, but sometime no doubt I was requested.

Q. Wasn't it Gierlichs who visited you in September or October 1939 and asked you to replace Mr. Greutert as trustee for Farben of these shares? A. I believe to remember it was Gierlichs. I'm not certain about the date.

10342 Q. And you signed a sales offer and loan acknowledgment, did you not? A. Yes, to my recollection.

MR. SCHWARTZ: Will the reporter please mark Document 11847, which is two photostats showing three documents—a letter, an option and a loan acknowledgment, and three translations of the three parts.

(The documents and translations referred to were marked for identification as Defendants' Exhibit 470-11847.)

By MR. SCHWARTZ:

Q. The German for you, Mr. Sturzenegger.

(The witness examined the document.)

MR. WILSON: May I see the letter, Dr. Sturzenegger? I'm curious about a date. This letter is dated the 16th of November and refers to a private deed of November 21st.

MR. SCHWARTZ: Perhaps Mr. Sturzenegger can explain that.

MR. WILSON: Five days afterwards. It's put in on a different typewriter.

THE WITNESS: I have read it.

By MR. SCHWARTZ:

Q. Those are your signatures on each of the three parts of that document? A. Yes.

Q. The letter, the loan acknowledgment and the offer?

10343 A. All three documents.

Q. Can you explain the apparent disparity between the date of the letter, November 16th, and the reference of November 21st in the second paragraph? A. No idea. Must have been just a mistake somewhere.

Q. Did you give these documents to Mr. Gierlichs or an-

other to take back to Frankfurt with any blanks that could be filled in thereafter? A. No, I don't think so. I am not sure about it.

Q. What was that private deed by which Farben placed at your disposal the purchase price of lei 1,500,000? In the letter, second paragraph. A. Yes. You mean the private deed reference to which is made?

Q. Yes. What is that document they call the private deed? A. I wonder if it's the Verkaufsangebot?

Q. Well, those are all dated, of course, the same day. A. Yes.

MR. WILSON: Is the acknowledgment what you call the Verkaufsangebot?

THE WITNESS: No, because this acknowledgment—there's again reference made to the private deed. That's why it's more conclusion it's this way.

10344 MR. WILSON: Was this date of November 21 in the acknowledgment inserted afterwards?

THE WITNESS: Well, I do not know.

By MR. SCHWARTZ:

Q. Do you recall that the discussion with Gierlichs comprehended the thought that the documents should not become final until the German Government had given its approval through the Devisenstelle? A. Do not recall such a thing.

Q. Do you recall that you agreed to sign these documents earlier than you did, but that the documents were not to be signed until the Devisenstelle gave its approval? A. No, do not recall that neither. I only recall the letter signed.

Q. Do you recall the nature of the discussion you had with Mr. Gierlichs on this occasion? A. Well, in a general way; that I didn't like the matter, but that just out of friendliness and courtesy, as a matter carried on for long years by Mr. Greutert, I felt obliged to do them the favor and just to step in, continue. I think that's what I made.

Q. You told them you didn't like the matter? A. I think so.

Q. Do you recall this was September 1939, October or November 1939?

10345 A. I think when I was approached.

Q. Yes, that's right. That's when this took place. A. Yes.

Q. And that is a month or so after Mr. Greutert's death? I'm just trying to fix the time for you. A. Yes.

Q. A month or so after Mr. Greutert's death. A month or so after the outbreak of the war? A. That may have been.

Q. Oh, that was. That I am just recalling to you. But I wanted to see whether you really meant to say that you told Mr. Gierlichs that you didn't like this matter that he was asking you to do. A. Well, I do not recall the words in the whole discussion. The matter was, of course, regarded as a trifle matter, just a courtesy, but I have never liked those fiduciary things and I think I have mentioned it.

Q. Do you know what the purpose of Farben was in having you or anybody as fiduciary for these stocks? A. Well, I didn't give the matter many thoughts. I thought one obvious reason was that they wanted to have in this selling company apparently foreign shareholders for some reason.

Q. You mean non-Rumanian shareholders? A. Yes.

10346 Q. Do you know any other purposes they may have had? A. No, I think that's the only one—at least the one that comes up to my mind.

MR. SCHWARTZ: Will the reporter please mark Document 11708, 11683, and 11792, which consists of two documents together and translations of both.

(The documents and translations referred to were marked for identification as Defendants' Exhibits 471-11708, 472-11683, and 473-11792.)

By MR. SCHWARTZ:

Q. Here are 471, 472 and 473.

(The witness examined the documents.) A. I have seen them.

Q. Will you keep in mind, please, that your sales offer was signed November 16th? A. September 16th?

Q. November 16th. Isn't that right? A. Well, no. November 21st.

Q. Oh; sorry. November 21st. Then will you note that in No. 471, the first one I gave you, 11708, does it not say that Sturzenegger declared or has declared his readiness to take over as our trustee Mr. Greutert's block? A. Yes, it says so.

Q. And will you note according to the next one—no, I'm sorry, the one after that, No. 11792, which is No. 473—
10347 that the Devisenstelle approval is granted November 10th? A. Yes.

Q. And then the last date I'd like to have you put in your mind is November 21st, the day you signed. Now, those, if I may summarize them for you, purport to show that by November 3rd Mr. Gierlichs said you had agreed; that the Devisenstelle approval was granted November 10th; and that you signed the documents November 21st. Does that help you to recall that you agreed first and that your formal signature of the documents was to await official authorization by the Devisenstelle? A. That I do not recollect, but according to these documents it was apparently so that I have been asked before and when they had got through Mr. Gierlichs, or whoever it was, my answer, then they made their application.

Q. I don't mean the "apparently" part. Does it help you to recall that your discussion with Gierlichs ended, let's say, with an agreement that you would do it if the Devisenstelle approved? A. No, I didn't care about the Devisenstelle. That had nothing to do with me.

Q. What were to be your duties as trustee of these shares, Mr. Sturzenegger? A. Well, just as described in those documents.

Q. But other than as described?
10348 A. Well, I think too it was understood too—at least it was handled in this way before—that ordinary proxies for stockholder meetings would be issued by the fiduciary shareholder.

Q. By you? A. Yes; formerly by Greutert.

Q. One of your duties would be that you would give proxies to persons designated by Farben? A. I think so.

Q. Other duties? A. I cannot recollect.

Q. Was it not to be one of your duties that you would accept the dividends and pay them over to Farben? A. Well, that is in this paper.

Q. Oh, I see. A. That is a former matter. But I do not remember having received any dividends nor having received any interest.

Q. Well, you were supposed to pay interest, were you not? Doesn't it work out this way? That you paid or were obligated to pay interest on the loan that Farben gave you and you would meet that interest by the dividends that came in? A. Yes.

Q. But if you got no dividends you would be guaranteed by Farben dividends so it would cost you nothing to make this loan and receive the dividends?

10349 A. Yes, according to this document.

Q. On the other hand, you weren't to make any money on them? A. No.

Q. If the dividends exceeded the interest you paid on the loan, you would turn the excess over to Farben? Isn't that the way it worked? A. Well, the practical way how it worked, according to my recollection, is that we—or I—didn't receive dividends and didn't pay interest, and no money at all was transferred.

Q. No money passed through you? A. No. That's my recollection.

Q. Do you remember whether any dividends were ever declared? Did you hear of any? A. I cannot recollect.

Q. Do you remember making out any proxies pursuant to Farben's instructions? A. I think I once or so done it.

Q. Do you remember making out any authorizations that would have permitted dividends paid to you to be paid to someone else? A. Don't recollect it.

Q. So you don't know whether any dividends at all were declared?

10350 A. No, don't remember that.

Q. Do you recall how many times you made out proxies? A. No, I'm not sure that I once did it even, but may be. I think that formerly proxies have been issued, I told you already, by Mr. Greutert. I'm not sure whether that was continued. May be. I think evidently it has been.

Q. Did the question ever come up of the location of the shares? Did they ever touch your hands? A. I don't think I have ever seen the shares.

Q. You don't think they ever were with you at all? A. Yes.

Q. Is that right? A. I don't think so.

Q. Can you be sure of that? A. Well, I feel pretty sure. At least I cannot remember having ever seen such a share.

Q. When you reported to the SCO as we had you confirm earlier that you had this property for Farben, do you remember whether your report took up the question of the location of the shares? A. I don't think so. I thin there was no question about that.

Q. You mean the matter of the location of the shares wasn't touched upon to your recollection in your report? A. I think there was no question in the form, but I

10351 do not remember how it was reported. I think it was reported as was necessary then and correctly.

Q. And this report that you made is such a report as you mentioned in the case of Athanil? The report on the occasion of the census of German assets? A. I believe so.

Q. And the asset, the German asset that you reported, was the beneficial ownership of these shares in Farben? Is that right? A. Well, we have not in Europe this specific American term of "beneficial ownership." We do not know it. I think—but I want again to make sure that I do not recollect how actually it was done. I think it was a reference to the fiduciary holding for I. G. Farben of this stock.

Q. But I want to be sure there was—you see, in Athanil you were vague as to whether the report had—there was

no problem here of a debit that washed out the matter, or something like that? A. No question of that.

Q. You had the stock as fiduciary for Farben, so you reported that fact? A. Yes. That's the best of my recollection.

Q. That Farben had a certain claim on the stock? A. Yes.

THE MASTER: Did you ever get any fee for doing this?

10352 THE WITNESS: No, I mentioned before.

THE MASTER: Did Greutert?

THE WITNESS: No, I don't think Greutert got one. I think it was just a trifle, courtesy matter, as you are sometimes asked by business friends.

By MR. SCHWARTZ:

Q. Well, all from 1939 for the whole war Farben was your biggest client, was it not? A. Pardon me?

Q. Your biggest banking client? A. Yes. Well, I just—that is; perhaps I want to ask—I think the I. G. Chemie was. That was perhaps the bigger client. And I'm not sure what time you refer to.

Q. I meant from 1939 throughout the war. A. No, I think that Chemie probably was the bigger client.

Q. You don't, of course, mean bigger in the sense of the capital of the two companies? There's no comparison there, of course. A. No.

Q. So how do you mean that Chemie was bigger? A. Well, I mean that apart from receiving and transmitting remittances already mentioned in this deposition our business with I. G. Farben during the war was not very extended.

10353 Q. How do you mean "not very extended"? A. Well, there were only a few credits that were mentioned in the SCO report, and some compensation transactions. I mean it was very small or much smaller compared with the pre-war periods.

Q. Well, let me just ask you about that a minute. Isn't

it so in 1939 and 1940 you did more business with and for Farben than before the war? A. We had much more business in the early '30's I think.

Q. But wasn't there a very sharp increase of the business you did for Farben in 1939 and 1940 over 1938 and 1937? A. No. We may have received perhaps more remittances but just as receiving remittances and transferring them on. That is much more technical banking business.

Q. You said Chemie was the bigger client as compared with Farben, but then you told us something about a decline in Farben's business, that it was not very extensive. How then was Chemie bigger? Did you make more profit out of your business for Chemie than you did out of your business for Farben? A. Well, I have not the figures in mind, of course, but it's a fact that we handled much of Chemie's business. I mean the administration of property of I. G. Chemie.

10354 Q. You mean you had on deposit more of Chemie's securities than of Farben's securities? A. Yes, no doubt.

Q. Did you make more money from Chemie's business than from Farben's business during the war? A. I think so. Although I'm not able to make just by heart exact statements as to the figures.

Q. Well, it was you who said that Chemie was a bigger client than Farben. A. Yes, sure.

Q. So I wondered on what you based it: More profit, more volume, more credits? Did you give Chemie more credits during the war than you gave Farben? A. Well, I'm not sure that we just gave them credits, but we administered property, and insofar, of course, we got provisions from them—or commissions.

Q. Well, then, did you make more money from your business with Chemie than with Farben during 1939 to 1945? A. I think so.

Q. You think so? A. Yes.

Q. Can you remember what credits you had outstanding

to Chemie during the war period? A. No, I was not thinking of credits. I was thinking much more of, for instance, the handling of the Grutchemie

10355 Konsortium whereby I. G. Chemie participated with nine-tenths, and such matters, and administration of other securities.

10362 Q. Now, you have mentioned occasionally the liquidation, clearing measure, that the SCO reported on at length, involving blocked credits you had with—let me see if we can confirm it—Berliner Handelsgesellschaft, Metallgesellschaft, Englert and Becker, and Romanil, Bucharest. A. That's right.

Q. And those blocked credits totaled some 767,000 francs?

A. I do not recollect the amount, but I think that's all right.

Q. I now just state it to refresh you. A. Yes.

Q. And it says further here that the last two credits—and they refer to Englert and Becker and Romanil—were guaranteed by the I. G. Farben. A. I see.

Q. Do you remember—That's correct, isn't it? A. I think it is.

Q. Do you remember the circumstances of the origin of the loan to Romanil and the guarantee by Farben? A. No. I think this matter goes very far back. To

10363 my recollection, credit was granted I think very early in 1930, maybe even before. I'm not sure about it. I think so.

Q. But it was continued for all those years? A. Yes, certainly.

Q. Until— A. Until the liquidation took place.

Q. So, can you tell us in what connection Farben guaranteed it? A. No, as I do not recollect the origin, I cannot remember that.

Q. But you knew the circumstances of the credit. You negotiated the liquidation and the settlement of it in the '40's, wasn't it, or the late '30's? A. Well, I mean I can-

not recollect that, but my explanation, if the facts are not contrary to that, would be that if the credit had been suggested in some way by I. G. Farben, then may be that I. G. Farben on this occasion has made the guarantee as probably requested by Greutert. But that's no independent recollection.

Q. Do you remember what security there was for the loan to Romanil? A. Well, you mentioned already this guarantee.

Q. Yes. That's perfectly right. A. That's security.

Q. That's a form of security. I meant physical
10364 security or the customary deposit or pledge or something like that. A. Well, I cannot recollect other things. There may have been.

Q. Perhaps you can tell us the kind of securities pledged with you that were released at the time of this clearing: A. You mean at this clearing concerning—

Q. This clearing involving 700,000 francs. Do you recall what various securities there were pledged to you? Perhaps that will help you to think of the one that was attributed to the Romanil debt. A. No, I cannot remember specific items. Well, I cannot exclude them neither.

Q. Were there securities pledged to you in subsidiaries or related companies of Romanil called Timanil and Coloranil? A. I remember those names.

Q. Do you remember that securities in them were pledged to you as security for the loan to Romanil? A. Well, that I cannot remember, but if they were and if they after the clearing as you call it were freed, that must be mentioned in the correspondence. I cannot recollect it.

* * *

10404 Q. I would like to discuss with you for a moment Mr. Georges Ch. DuBois— A. I see.

10405 Q. —who is involved in the corporations which are involved in the ownership of your firm. A. Yes.

Q. Will you let me just recapitulate for a moment and

you check me. He was a stockholder in Industriebank and Sopadep, was he not? A. That's right.

Q. And he was a member of the board of Industriebank? A. That's right.

Q. And he was a fellow member of the board with you in that corporation named Helico that you once mentioned? A. Correct.

Q. And he was, was he not, also a member of various boards of German corporations, Degussa and Hiag and Chemische Fabrik Wesseling? A. Well, that I do not know. I know that he was a member of the Degussa which means the Deutsche Gold-und-Silberscheideanstalt.

Q. What was the Deutsche Gold-und-Silberscheideanstalt? That was a kind of Farben subsidiary, was it not? A. Not at all.

Q. No? A. Not to my knowledge. I think it was a very well known German enterprise in the metal field, and if I am not wrong was close especially, or had been close to

10406 Metallgesellshaft. And then it may be that Farben too, had an interest and that there was a mutual interest, but I am not sure about it. But that is the best of my knowledge.

Q. Degussa had various connections with Farben through other such companies as Chemiewerk Homburg, did it not? A. Well, it may be.

Q. Perhaps you know Chemiewerk Homburg under an earlier name, Chemisch-Pharmazeutische. A. In Hamburg or Homburg?

Q. Homburg, H-o-m-. A. That's right; I know this.

Q. And Chemiewerk Homburg was once named Chemisch Pharmazeutische? A. Yes.

Q. Do you know of connection with Degussa and Farben in terms of that company? A. Well, I think it is speculation but I believe they had a common interest or something.

Q. Now, Mr. DuBois was related in a manner to Mr. Weber-Andreae, was he not? A. I am not sure. I know his

wife was German born, but I am not sure whether he was related to Weber-Andreae.

Q. The director of Farben. A. No. I remember the name Weber-Andreae, and I knew the gentleman, but I am not sure whether he was connected to him.

10407 Q. Wasn't he connected through his wife with Weber-Andrea? Wasn't there a DuBois who worked for Weber-Andrea, or a secretary who was a connection of Mr. DuBois? A. What is the last question? I didn't get it.

Q. Wasn't there a connection between Mr. DuBois and Weber-Andrea's personal secretary, a Miss DuBois?

MR. WILSON: Did you know that Weber-Andrea had a personal secretary named DuBois?

THE WITNESS: Of course not.

By MR. SCHWARTZ:

Q. Where was Mr. DuBois born, do you know? A. I don't know.

Q. He was a Swiss citizen? A. Oh, yes. It is a very well known old family of the French Swiss part of Neuchatel. I think he has always been a citizen of Neuchatel, but I do not know whether he was actually born there. Therefore I say I do not know.

Q. Now, was Mr. DuBois a client of your firm? A. Yes.

Q. Did he take any loans from you in connection with either his holdings in Industriebank or Sopadep? A. No, I don't think so.

Q. He took some loans in connection with his holdings in Sopadep, I think, according to the SCO. A. With my firm?

10408 Q. I am not sure; one of the firms. A. I don't think so.

Q. Did he take any loans from your firm? A. Well, I am not absolutely certain. I don't think so.

Q. What was the nature of his business with your firm? A. Well, he had property, personal securities, he had deposited with us as bank.

Q. I see. And what kind of properties were they? Corporate securities, of course. A. Just different shares. Do you remember what kind they were? A. I do not remember the names.

Q. Swiss or German? A. I think both, and maybe others, too.

Q. Do you remember the corporations involved, Swiss and German? A. No. The German—it may be that he had shares of Deutsche Gold-und-Silberscheideanstalt. I am not sure about that. Just a mixture of stock, I think, or bonds, I think Swiss primarily, but I am not sure.

Q. I have here a note or reference to the fact that you said earlier in the deposition that you were on very friendly terms with Dr. DuBois. Was that the Dr. DuBois you were referring to? A. Yes, I knew him very well. Especially I knew him

10409 because Mr. Greutert had been on very friendly terms, and I have seen him often.

Q. Now, did you know, while you knew him and before the war, that he held as trustee for Farben stock in Treupha, a Swiss corporation? A. No. I mean I must specify it this way. I knew that he held stock in Treupha—maybe he has once mentioned it or I was aware of the fact—that he went off to Baden, Switzerland where this company, I think, has its domicile, but I didn't know that it was held for I. G. Farben.

Q. Did you know that he was holding it for anybody other than himself? A. No, not to my knowledge. But I have seen that all from those documents.

Q. Did you know whether he held any of the securities on deposit with you for someone else? A. No, I don't know it.

Q. Do you remember any correspondence in connection with his being your customer, or any matters that indicated that he held any of the securities on deposit with you for anyone else? A. I cannot remember such a fact.

Q. What was his occupation? A. He— well, when I made his acquaintance he was retired from business and occupied himself with administration

10410 of his fortune and so on. He was rather well off, I think. And formerly I have heard that he, I believe, had an important position in the Degussa. He had stayed and lived a long time in Germany in prior times.

Q. Do you know when he became a resident of Switzerland? A. You mean again?

Q. Yes. You believe he was a native-born Swiss? A. Oh, yes, I think so.

Q. You said he stayed and lived in Germany a long time. A. I think so.

Q. Do you know about when he ceased staying and living in Germany? A. Well, that I do not know, but my recollection is that he was already residing in Switzerland when I first met him, and that maybe—

Q. Which was about—? A. Well, I think when I entered the firm.

Q. The early '30's? A. Yes.

Q. So from the early '30's onward he was a resident of Switzerland? A. Yes, or maybe even before.

Q. Yes, possibly before, but from then that you knew him? A. Yes, to my recollection.

10411 Q. And you understood that before then he had held a position with Degussa, a position in the management? I mean some kind of official of Degussa. A. Well, that I do not know, how he was connected, and I only knew that he had been living years in Frankfurt, and—

Q. With whom in a business way? A. It may be then that he had to do with Degussa or had some connections, but what kind it was—

Q. Degussa was located in Frankfurt? A. Near Frankfurt, I believe. Was he not Consul General of Switzerland in Frankfurt once?

Q. I do not know that. A. I am not sure of it. I think he was referred to as Consul DuBois.

Q. We have seen him only referred to as Dr. DuBois, and I was going to ask you what training that indicated. A. I have a vague recollection that he was Consul.

Q. Do you know what the "Dr." indicated in his name? A. No. I think he was a mineralogist or chemist or something like that. He had traveled around the world.

Q. He was on the technical side, a chemist or—what did you say?

MR. WILSON: Mineralogist.

THE WITNESS: Well, I remember only from discussions that he had traveled a lot, seen all the world, and I think in the

10412 oil field, even, he had, or mineralogy field, worked. I do not know the details.

By MR. SCHWARTZ:

Q. And how did he come to be a stockholder in Industriebank and Sopadep? Was it at Mr. Greutert's—A. He was a very good friend of Mr. Greutert.

Q. Did you know of his sale of his holdings in Treupha in about 1943? A. No.

Q. Did you know that he ceased at one point of time being a stockholder in Treupha? A. No.

Q. Did you know that Treupha was a sales agency for Chemiewerk Homburg, Chemisch-Pharmazeutische? A. I think I learned that later on, maybe. I do not know how.

Q. Did you know that Chemiewerk Homburg, or Chemisch-Pharmazeutische, by those two names, was one of the companies managed by Farben in an operating sense? A. No.

* * *

10443 Q. Do you notice there—This, incidentally, is a memorandum by Mr. Eriksen of conference with Schmitz in 1935. I think only his intials appear. No, it's signed, is it not? A. Yes. Well, it's—

Q. Well, it was signed? A. It purports to have been signed.

10444 Q. Right.

MR. WILSON: You know, there is another date mentioned.

MR. SCHWARTZ: It's the conference 30 April, and the memo was apparently dated 6th of May.

MR. WILSON: Then the first sentence of the conference refers to the enclosed P.M. of April 11, 1935.

MR. SCHWARTZ: That was the attachment which is called "Hydro's Interest in Chemie."

MR. WILSON: I see it.

By MR. SCHWARTZ:

Q. Now, you notice the reference here to Hydro's inability to sell its Chemie shares without consent of I. G. A. I see that.

Q. Now, we took that to mean without the consent of I. G. Farben, although I suppose I. G. were also the initials in front of Chemie's name. But does that help you any as to whether the consent necessary for the sale was that of Farben or Chemie? A. No. It helps me insofar as after having reread some documents believe that those clauses go back to the original agreement between Norsk Hydro and I. G. Farben of the year 1927, which were mentioned previously by you. And I believe there was such a clause that for a certain time period—ten years—which would mean up to 1937—there the mutual participations should not be sold or encumbered or

10445 something like that without mutual consent of the companies. And then we have made out that some years later on—

Q. 1931? A. Apparently in 1931.—Norsk Hydro exchanged its participation, buying those parcels or this parcel of 20-odd-thousand I. G. Chemie shares instead of its previous holding of Farben shares; and my construction is that the clause was in a similar sense extended to this new participation.

Q. The one about no sale without the consent of some one or the other? A. Yes, I think so.

Q. Do you remember whether that required the consent for Norsk Hydro to sell of Farben or of Chemie? A. I am not sure about it. I just tried to give you the picture as I have it in mind.

MR. WILSON: Mr. Schwartz, I find that I. G. is used on several occasions obviously interchangeably with I. G. Farben. It never appears to be used interchangeably obviously with I. G. Chemie.

MR. SCHWARTZ: Well, that's why I said we took "I. G." to mean a reference to Farben.

MR. WILSON: Farben. I think it does.

THE WITNESS: Probably the case.

By MR. SCHWARTZ:

Q. As a matter of fact, Mr. Sturzenegger, in Europe

10446 "I. G." is almost a contraction for I. G. Farben, is it not? A. It is normally.

Q. Popular, very widely used by almost everyone? A. Yes, I should say so.

Q. In this supplement to the memorandum, Mr. Sturzenegger, you notice that Mr. Erlcksen in 1935 notes 20,850 and 1390. A. Yes. On that you have a counter-value apparently at a small premium.

Q. Does that help you to remember that the change from 20,850 to that plus 1390 occurred even earlier than 1935? A. I believe so. I am not certain, as I do not recollect.

Q. Incidentally, this states too that Item 1, the 20,850 shares, were deposited with the firm Greutert. A. Yes.

Q. Now, we saw that in 1931 you held them for Norsk Hydro. A. Yes.

Q. Do you remember how long your firm held them on deposit for Norsk Hydro? A. Well, during I think part of the '30's.

Q. Until about when? A. I'm not sure about it. I think—

Q. Did it hold them during the war?

10447 A. No, I think it was so that we at a later period still held the so-called "Kuponsbogen." You see,—

Q. Coupons? Dividend coupons? A. Yes. It's usual in Switzerland. Very often it's in the normal way to issue stock in such a way that the title on the first page has—well, contains description of the company, and that's really the title of the share, but attached to the second page are the so-called "Kuponsbogen" where you have quite a number of coupons.

Q. Certificate and the coupons? A. Yes.

Q. And so you held which? A. We held the coupons in later years.

Q. Did you hold any during the war? A. Yes.

Q. The coupon part? A. Coupons, yes.

Q. And there was no occasion to collect dividends because Chemie declared none during the war? A. No. After 1941, no. And I believe we held in addition those half-paid.

Q. 1390? A. I think so.

Q. Coupons or the whole thing? A. I think the whole thing.

10448 Q. Because that memorandum says they are in a safe as of 1935. As of 1935 it says they are in a safe in Solligaten, which sounds like a safe of Norsk Hydro. A. No, I'm not sure of that. I feel pretty sure about the coupons to the great parcel.

Q. Now, Mr. Sturzenegger, do you remember in October and November 1941 a plan and negotiations for Norsk Hydro to sell its 20,000-odd shares in Chemie? A. Yes, I remember that.

Q. Can you describe the negotiations and what came of that? It never happened? Is that right? A. No, it never happened.

MR. WILSON: Read that question.

(The reporter read the last question of record.)

MR. SCHWARTZ: I wanted to show these were not negotiations that led to sale.

By MR. SCHWARTZ:

Q. It's right Norsk Hydro has never sold Chemie shares? A. No.

Q. Still owns them today? A. Yes, to my knowledge; but they tried.

Q. And in October or November 1941— A. Yes.

Q. —they planned to sell them?

10449 A. Yes.

Q. Tell us as much about them as you can. A. Well, I remember discussions on this topic in Basle at that time, I think in October 1941, and there appeared, if I am not mistaken, Mr. Meinich Olsen, the leading man of the Norsk Hydro, accompanied by I believe Kreuger and Gierlichs. Well, I think these were the Farben men. And there were on the same matter also discussions with Swiss Bank Corporation. These discussions were, I believe, with General Manager Schweizer. Well, and I recollect that Mr. Olsen developed some plans, pointed out that Norsk Hydro would like to sell as fast as possible their I. G. Chemie shares, and at the same time, if possible, make a transaction whereby Norsk Hydro would be in a position to buy as cheaply as possible their own obligations—I mean bonds—issued previously I think by the Swiss Bank Corporation on the Swiss market.

Q. Bonds, were they? A. Bonds, yes. Well, there were many aspects discussed, and Mr. Olsen seemed to be quite eager. There was one plan, if I am not wrong, that Swiss Bank Corporation could perhaps buy this parcel of 20-odd thousand I. G. Chemie shares, for it was pointed out from the beginning that would be impossible to buy such a big parcel in the open market.

Q. You mean sell?

10450 A. Sell it in the open Swiss market at that time. There were discussions about price and the whole thing didn't materialize. Norsk Hydro—I mean Mr. Olsen—

of course wanted to buy the Norsk Hydro bonds as cheaply as possible, whereas the Swiss Bank Corporation felt under moral obligation to protect the Swiss bonds' owners as the Swiss Bank Corporation had floated this loan in previous years. And then there were some discussions about the book value of the Chemie shares in the books of Norsk Hydro and that Norsk Hydro wouldn't like to suffer a substantial loss in such transaction, and so on. I do not recollect all the details. There were rather lengthy and complicated discussions.

Q. Now, you have told us that Meinich Olsen came from Norsk Hydro, Kreuger and Gierlichs came from Farben. A. They accompanied him, I believe.

Q. I beg your pardon? A. They were with him I think.

Q. They were—? A. With him.

Q. With whom? A. With Olsen.

Q. You mean they were representing Norsk Hydro? A. I don't think so.

Q. Well, they represented Farben, did they not? A. They represented Farben or—well, just tried to
10451 help in the transaction in some way.

Q. And Schweizer represented Swiss Bank Corporation? A. Yes, no doubt.

Q. And who represented Chemie Sturzenegger's side? A. I believe Mr. Gadow and myself were parties of these discussions.

Q. Right. Now, wasn't there a problem of Swiss Bank getting a guarantee that it would suffer no loss on the Chemie shares that it would buy from Norsk Hydro? A. Was that—I'm not sure about your question.

(The reporter read the question.)

A. Oh, that may have been discussed too, but the whole matter didn't materialize at all.

10506 Q. This is the Norwegian language memorandum that Chemie filed with the Norwegian Government, Mr. Sturzenegger. A. I see.

Q. I want to show you several paragraphs. There is a long chronological statement of facts. A. In this memorandum?

Q. Yes. First it shows in Paragraph 18—I will just read it aloud and I am sure you will confirm it: "In 1927 cooperative arrangement between Hydro and Farben was established, and November 3, 1927 the capital stock of Hydro was increased from kroner 57 million to kroner 76 million by 106,740 common shares, value kroner 19,213,200." A. Yes.

Q. "The new shares, numbers 295,219-401,958 were taken over by Farben."

10507 A. Yes.

Q. That establishes the source, I think, of the shares. A. Yes.

Q. Now, in Paragraph 26—you just read it and then I will state the facts. A. I see.

Q. I will state it and I am sure you will agree. It says: "Interhandel, October 30, 1928, used capital that had been paid in to purchase shares in Durand & Huguenin, and also to purchase 51,584 shares in Hydro." A. I see.

Q. "These Hydro shares belonged originally to Farben and were purchased by Greutert & Co. for I. G. Konsortium which is to be considered a predecessor of Interhandel. They were taken over by Interhandel on October 30, 1928 in a completely normal manner without any arrangements or collateral arrangements."

So that takes us to the first step. In 1928 Chemie bought 51,584 shares from Greutert which had bought them for the I. G. Konsortium, which came from Farben. A. Yes. What is the number?

Q. That was 51,584. So the purchases for the I. G. Konsortium, I suppose, were made with a view to the I. G. Konsortium becoming Chemie. A. Well, I think so.

10508 Q. The assets— A. Many assets which went through this Konsortium went afterwards, after this—

Q. —to Chemie. I think almost all did, did they not? A. I think a great part.

Q. It was the grouping of assets which were to go to Chemie? A. Yes.

Q. So you might say these shares were bought by Chemie even before Chemie existed. They were destined for Chemie. A. They were destined for Chemie; I think that is correct.

Q. Then in 1929 I think we will see Chemie bought an additional block. That is in Paragraph 45. A. I see.

MR. WILSON: How much more?

By MR. SCHWARTZ:

Q. On October 17, 1929 Interhandel purchased through Greutert & Co. 55,556 shares in Hydro. Interhandel then owned 106,740. A. 106,740?

Q. Well, the text says 106,740, but the arithmetic of the two figures is slightly different, 51,584 and 55,556 come to 107,140.

MR. WILSON: It is a difference of—

10509 By MR. SCHWARTZ:

Q. But I have seen the figure of 106,740 often. A. I have seen it in several documents, and I think that is more correct.

* * *

10557 MR. SCHWARTZ: Will the reporter please mark Document

10558 16034. (The document and translation referred to were marked for identification as Defendants' Exhibit 506-16034.).

(The witness examined the document.)

THE WITNESS: I have read it, Mr. Schwartz.

By MR. SCHWARTZ;

Q. Taking it paragraph by paragraph, the first paragraph is—Incidentally, it seems that discussions were between

Fahle and Bachem on one side and you and Dr. Gadow on the other? A. Yes, it seems. I have had a vague recollection. Therefore, I mentioned Fahle. He was once in Basle.

Q. It seems then that you and Dr. Gadow handled this matter for Chemie as well as the matter of the sale of Norsk Hydro's shares in Chemie that we talked about yesterday? Is that right? A. Yes, of course these were just preliminary discussions. The matter and the decision—I mean decisions were taken by the board of course.

Q. I mean these discussions were handled by you and Dr. Gadow for Chemie. Right? A. Yes.

Q. Taking the first paragraph, that seems to be a statement of your position and Dr. Gadow's position as
10559 stated to Frank Fahle and Bachem. Is that a substantially correct summary of your position in the first paragraph? A. What statement do you refer to?

Q. The entire first paragraph I see as a restatement of what you and Dr. Gadow said, so I ask you whether it is substantially correct in its recount of what you said. A. Substantially, roughly, I should say, Yes. I cannot recall details.

Q. Well, do you see anything in there that you definitely think you didn't say? A. No. I think that it was—it mentioned that as a matter of principle, and as an investor, of course, we had an interest in the matter.

Q. In participating in the capital increase? A. Because we were aware from the beginning that if we wouldn't participate that would mean great loss for I. G. Chemie.

Q. All right. That seems to be the first statement. Do you want to take them one by one? A. Just as you like, Mr. Schwartz.

Q. Very well. The next statement seems to mean that you and Gadow said that expenditure of Swiss francs was impossible because of the attitude of the SCO and because the Norsk Hydro shares were blocked assets and would have to be written off. Is that correct?

10560 A. Well, I think this mentioning of the Swiss Compensation Office was not made or not in such a way or only as a pretext, but even if the Swiss Compensation Office would have given their consent we would never have consented to invest any Swiss Francs. Insofar it's not correct.

Q. But is it correct that the two reasons you gave for your finding it impossible to put in Swiss francs were as stated there? A. I cannot recollect that the reason related here as to the Swiss Compensation Office was given.

Q. But you do recollect the other reason here stated was given? A. Yes, that it would mean an investment in an occupied country with a blocked and devaluated currency no doubt.

Q. The next statement seems to be that you said: "For the same reasons, a setoff against the credit taken up by Norsk Hydro with Sturzenegger for the re-purchase of the bonds—as suggested in our letter to I. G. Chemie—could not be considered." A. No, I think that must be an error.

Q. Well, wasn't there some kind of credit Norsk Hydro had taken up with you so as to be able to repurchase its bonds? A. No. They approached us once—I do not recollect

10561 when—and I think we thought that such a thing couldn't possibly be carried through. We wouldn't get the permission probably from the Swiss Compensation Office. And then it was dropped and another solution was chosen along those lines: That the firm Sturzenegger would in the interest of Norsk Hydro, upon their wish, buy a certain amount of Norsk Hydro's bonds in Switzerland. And these as a known participation, and it was carried on on our books. But that at the time there were no longer mutual handicaps and restrictions. At that time Norsk Hydro would be under obligation to buy this amount of Norsk Hydro bonds from us at the purchasing price plus interest, maybe a commission. And that they had to pledge as security for this future obligation to take those bonds

over, of course, those bonds which were in our possession and ownership. And, I think, an additional couple of I. G. Chemie shares.

Q. Couple? You mean a few? A. Well, some hundreds I think.

Q. Some hundreds? A. Yes.

Q. And this was done you say? A. That was done.

Q. The idea of a credit in this memorandum you say was not done? A. No.

10562 Q. But what was done—let's see if I understand it—you arranged with them that you would buy certain numbers of Norsk Hydro bonds— A. Yes.

Q. —and hold them as your own? A. Yes.

Q. And at a time when you said there were no neutral handicaps—A. No, "mutual."

MR. WILSON: Mutual.

By MR. SCHWARTZ:

Q. Mutual or neutral? A. Mutual.

Q. Mutual handicaps such as what? A. Arrangements by them. They paid countervalue in Swiss currency and from Switzerland we were no longer under obligation as to an occupied country.

Q. What obligations are you referring to? A. The obligation that there is, as you know, a federal decree I believe of the year 1940, whereby assets belonging to persons or firms domiciled in the occupied country are blocked in Switzerland and cannot be freely disposed.

Q. Does that include a bond that Norsk Hydro issued in the Swiss market? A. If we had for account of Norsk Hydro—

10563 Q. —certain— A. —bought bonds in such a way that the ownership rights belonged to Norsk Hydro,—

Q. That would have been illegal? That would have been blocked? A. —without proper permission.

Q. That would have been blocked if you held Norsk Hydro bonds for their account? That would have been blocked? A. Yes.

Q. Which would mean you could not have sold it or you would have what? A. Just we couldn't have carried through the transaction then and couldn't have handed them to Norsk Hydro as they wished without permission of the Swiss Compensation Office, and we thought that such permission—

Q. I see. Right. So you agreed that when that decree was ended—A. Yes.

Q. —you would then sell them to Norsk Hydro for the purchase price plus a commission? A. Plus commission, plus interest.

Q. And as security for their obligation to pay you at that time you took from them certain shares of theirs in Chemie? A. Yes.

10564 Q. Well, then didn't they take up a credit with you and give you a pledge? A. No.

Q. Isn't that credit? A. We didn't advance them any money.

Q. Well, you bought something. A. No, for our account.

Q. Which they would buy later on. A. Yes, too can they buy a house and say, "Good friend, in ten years I will sell it to you."

Q. But they gave you a promise and a pledge that they would buy it from you? A. Yes, but we didn't give them a credit.

Q. I see. I don't understand the difference, but if you say so. A. Well, there is a great difference, and the whole matter was afterwards discussed and shown to the Swiss Compensation Office, because the transaction was really after the war and after freeing of Norway was carried through.

Q. It was carried through after? A. It was carried through, and the Norwegians were very glad for this help after they were free again.

Q. I don't think you said when this purchase of bonds and the pledge took place. A. It was 1941, maybe 1942. Well, it was I think a

10565 certain period. And afterwards I have heard I think that the same thing or a similar thing has been done I believe by the Swiss Bank Corporation. We heard that they were asked too.

Q. Can you fix it in time as before the United States went to war or after? A. Before what?

Q. You said it was 1941 or maybe 1942. Can you fix the time it was done as before December 7, 1941 or after? A. Well, that I'm not sure now?

Q. Late 1941? Early 1942? You're not at all—A. No, I cannot make a statement.

Q. How large an amount or sum was involved? How many bonds or how much did you spend for them? A. It was to my recollection nominal value of some hundred thousand Swiss francs bonds was involved.

Q. That you expended for these bonds? A. Well, we bought them, of course, at discount because they were quoted—

Q. I understand. A. —not at par.

Q. I understand they were depressed. But the hundred thousand Swiss francs you mentioned, that is the sum you spent? You may have gotten a higher nominal value? A. We invested about to my recollection two to three hundred thousand Swiss francs.

10566 Q. Two or three hundred thousand Swiss francs? A. Yes.

Q. I see. And I suppose you got a nominal value in terms of Swiss francs of substantially larger than that? A. Yes.

Q. And how large a pledge of Chemie shares was there? A. I believe, though I am not certain, eight to nine hundred.

Q. Fully-paid? A. I believe so.

Q. That is the bulk of what Norsk Hydro had anyway, wasn't it? Their holding in Chemie was almost all fully-paid? A. No.

Q. I think we saw that yesterday. A. Is it?

Q. I think so. It doesn't matter. A. Yes. In addition there was some half-paid.

Q. Was this arranged with Meinich Olsen at the time he was there? You saw yesterday one or two memos. A. I think it was discussed then.

Q. October 8 to 11, 1941. A. Maybe another visit. I'm not absolutely sure.

Q. I think the problem may even be mentioned there. Let's see if we can find it.

Well, this I think is Dr. Schweizer's memo. I think it

10567 is mentioned there. Could you perhaps find it in the German text?

MR. WILSON: Look at 488.

MR. SCHWARTZ: In a minute. I am pretty sure there is a reference to it in 491.

MR. WILSON: No, I'm wrong.

THE WITNESS: Well, I don't see it mentioned.

MR. WILSON: 489.

By MR. SCHWARTZ:

Q. Well, there is talk in there, isn't there, of buying up Norsk Hydro bonds in Switzerland but no mention that you were doing it. Isn't that the idea? A. That's the idea.

Q. Well, does the fact that the problem was being discussed in that memo of October—that is October 7 to 9, 1941—does that help you fix the time more when it took place? A. No, I cannot remember. I'm not sure.

Q. If it had not been done by then, do you think it ran over as a negotiating matter for sometime after that? A. Or before that. I'm not sure.

MR. WILSON: This statement in the Frank Fahle letter of June 3, 1941 which prompted all this discussion says: "For the same reasons a setoff against the credit taken up by

Norsk Hydro with Sturzenegger for the repurchase of the bonds
10568 could not be considered." I mean I realize that Mr. Sturzenegger found some question about the accuracy of that statement. I gain the implication from it, without knowing the fact at all, that the credit pre-existed the date of June 3, 1941.

THE WITNESS: Yes, according to that, except the fact that it was not a credit.

By MR. SCHWARTZ:

Q. No credit was granted? A. But, I think this Fahle recommendation refers probably to this picture but—and he was not always very accurate—he misunderstood perhaps the situation and put it this way. But it seems to refer to that.

Q. All right, Mr. Sturzenegger. Let's go on. We were on this June 3rd memo, Exhibit 506, and we were taking up the statements that it is reported you and Dr. Gadow made. The next one is something like: "It would, however, be possible to follow the next suggestion, namely, that I. G. Chemie take up a credit with Norwegian banks to be repaid from the Norsk Hydro dividends accruing to I. G. Chemie." That, I think you said, you did suggest to them or did you say that they suggested it to you? A. No, I think it was suggested I mean by us that such a solution if possible was a thing to be considered. I don't think that we just said then we will do it. But I
10569 think we said try it. If such, then the whole picture would look different for us.

Q. Yes. Then the next sentence: "However, I. G. Chemie must have the absolute guarantee that the credit be repaid only from the dividends on the Norsk Hydro shares, i.e., the old and the new ones." Is that what you said? A. Well, I think that was more or less a consequence of such a suggestion. We didn't want to put up new money or new securities.

Q. So you think that is substantially— A. More or less roughly, substantially. I cannot remember all the details.

Q. All right. "In addition, Chemie is ready to pledge the new Norsk Hydro shares as security for the credit." I suppose that's correct. You said that? Because that's what you did eventually, isn't it? A. I think it was discussed. I cannot really remember now all—

Q. Let's skip the next paragraph for the moment and take the third paragraph. Do you remember that, as stated there, in these discussions with Frank Fahle and Bachem, Dr. Gadow requested a letter, a letter from Norsk Hydro, that it shouldn't be a letter from Farben, and that it should say thus and thus as spelled out there? A. Well, I do not recollect all the details, but it's

10570 fairly possible.

Q. Do you remember you requested that a letter should come— A. Yes.

Q. —stating the capital increase and stating that it was an idea that you should have a loan? A. Yes.

Q. And do you remember requesting that it not be a letter of Farben's but a letter of Norsk Hydro's? A. Well, that was obvious. It was a capital increase of Norsk Hydro. We hadn't to do with Farben at all.

Q. Do you remember that you had received letters from Farben about this but you didn't want it to be in letters from Farben that you learned about it but that you rather wanted to learn about it from Norsk Hydro and that you said that to these gentlemen? A. I cannot recollect that, but if it was said it seems to me very natural.

MR. WILSON: Where does it say you wanted to learn about it from Norsk Hydro?

MR. SCHWARTZ: I. G. Chemie is not interested in getting a letter from I. G. in this matter but wants only a letter from Norsk Hydro.

MR. WILSON: That shows nothing about learning about it from Norsk Hydro. It's obvious they want to take the letter

10571 from Norsk Hydro down to the SCO or the Swiss authorities. They may have learned about it in 15 different ways. It's perfectly reasonable that they would want a letter directly from Norsk Hydro.

MR. SCHWARTZ: Well, that's the fact.

MR. WILSON: Certainly it is, but you insert the idea that they wanted to learn about it from Norsk Hydro.

MR. SCHWARTZ: Well, you certainly learn about something from the letters you get.

MR. WILSON: Not if you know about it beforehand.

MR. SCHWARTZ: All right.

By MR. SCHWARTZ:

Q. Do you remember saying to these gentlemen at the time, Mr. Sturzenegger, that you wanted not letters from Farben, which you already had, but letters from Norsk Hydro? A. Well, I do not remember that we had already letters. May be. But I mean we—this was just a preliminary discussion, and in order to take up the matter with the board or the Swiss authorities, it is, of course, obvious and natural that we wanted to have firsthand information of the party really concerned. That was Norsk Hydro.

Q. So you remember asking that? A. I think that may have been, if the question came up, may have been discussed. Well, I cannot remember in detail.

Q. Does this refresh you that it came up?

10572 A. Well, I believe that's roughly correct.

Q. All right. Fine. Do you remember then—I had been on the second sentence—do you remember asking Bachem and Frank Fahle that they should make the attempt to get the necessary credit for you in Oslo under the conditions outlined above? A. I think I stated before that I remembered having—that we asked the gentlemen in Basle to look after the matter and get in touch with Norsk Hydro too and authorities and the banks and, if possible,—

Q. —get the credit? A. —get the credit or investigate whether such credit and under what conditions—

Q. There is a difference between asking them to get the redit or just investigate. Do you remember asking them get the credit for you? A. Well, certainly not to arrange ything in a definite way but to—

Q. —to get an offer of a credit for you? A. Yes.

Q. You remember that? A. I think so.

Q. All right.

THE MASTER: Mr. Sturzenegger, a little while ago you stified that if Chemie did not subscribe to the new issue of

10573 stock its interest would be badly damaged.

THE WITNESS: Yes.

THE MASTER: I think those were your words. I was wonering why that would be so?

THE WITNESS: You see—may I put it this way—the Norsk ydro shares which were quoted in Oslo especially—France think too—were then and had been in the years before uoted much higher than par. Par is 180—180 kroner one hare. And I think they were quoted more near to 200 or ren more. Now, we had learned that capital increase would e carried through in such a way that the new capital would e issued at par, the new shares, so that means, of course, flation of the capital value of the—

THE MASTER: It would simply dilute your equity to that xtent? The new issue would simply dilute your presently-wned equity unless you newly subscribed?

THE WITNESS: That's it.

THE MASTER: No other particular reason?

THE WITNESS: That was it.

By MR. SCHWARTZ: Well, didn't I also understand you speak of the fact that the Norsk Hydro stock would ave to be written down because it would be a blocked alue? A. That was already the case.

Q. And it would also be the case for new shares, would it not?

10574 A. Yes, if we had invested Swiss francs. Then we would, of course, have been under obligation to write

them down at once at 25 or what per cent, a part of the Norwegian countervalue. And by way of getting credits in blocked currency and using them in subscribing, we could avoid these damaging effects. It was the only way.

Q. There is a reference in this memorandum to a letter of Farben's to Chemie, and it must have been earlier than June 3. I would like to show you a letter of Farben to Chemie of May 7th.

MR. SCHWARTZ: Will the reporter please mark 15832.

(The document and translation referred to were marked for identification as Defendants' Exhibit 507-15832.)

THE MASTER: While he is getting that, Mr. Sturzenegger, I am interested also in a remark in Exhibit 503-15657, page 2.

THE WITNESS: What's that?

THE MASTER: A letter from Farben to Norsk Hydro dated April 18, 1941.

MR. WILSON: What base number did you give to that?

THE MASTER: 15657. You will note at the end of page 1 of the German, page 2 of the English, the remark: "As we told you over the phone, this incorrect fact that I. G. Chemie had suggested such a settlement must on no
10575 account become known to the Swiss authorities or I. G. Chemie either."

THE WITNESS: Yes.

THE MASTER: I'm interested in the last phrase: "Or I. G. Chemie either." Does that suggest any facts or explanation?

THE WITNESS: No. The explanation—that is the only thing I can make out—that then it would be obvious from the correspondence that it was some kind of mutual agreement between I. G. Chemie and Norsk Hydro.

THE MASTER: Was there censorship?

THE WITNESS: Pardon me?

THE MASTER: Was there censorship at the time by the Swiss authorities of incoming foreign correspondence?

THE WITNESS: I don't think by Swiss, but—

THE MASTER: Then how could it have hurt you to have the facts mentioned?

THE WITNESS: We in our negotiations then, following negotiations with the Swiss Compensation Office, we would have had to rely on this correspondence and would have to show them such correspondence, and that was, of course, what had to be avoided.

MR. WILSON: The additional interesting fact is the sentence starts out by asserting it is an incorrect fact.

MR. SCHWARTZ: Let me see if I am able to summarize what I have thought was Dr. Sturzenegger's testimony on the point.

10576 The fact was that you had suggested it?

THE WITNESS: Yes, I think so.

By MR. SCHWARTZ:

Q. But you didn't want it to appear in correspondence that you might have to take to the SCO that you had suggested it? A. I think—

Q. Isn't that what you have just been telling the Master? A. It should be and appear as a suggestion—

Q. —of Norsk Hydro? A. And unilateral decision of Norsk Hydro.

Q. It couldn't have hurt you to know that you had suggested it because you did know it, but you didn't want it in a letter that would come to you and which you might have to take to the SCO? A. Yes, because then it would have no longer been a unilateral—

Q. You were, shall we say, being a little less than frank with the SCO? A. In this respect perhaps, yes, but that was all preparatory discussion and later hasn't been carried through.

(The witness examined Document 15832, marked Exhibit 507-15832.)

THE WITNESS: I have read it, Mr. Schwartz.

10577 By Mr. Schwartz:

Q. Do you recognize this as a letter received by Chemie, perhaps the first letter Chemie received on the subject of the capital increase? A. Well, I do not remember it, but I think we got it. I have not such a clear recollection as from the other one.

Q. Do you have a recollection that you got some such letter as this? A. I have a vague recollection that we got a letter before that letter of Norsk Hydro May 31st, and I think that is the letter.

Mr. Wilson: May I see that, Mr. Sturzenegger?

(Mr. Wilson examined the document.)

By Mr. Schwartz:

Q. Now, this too on page 2 where it begins to say, "Attorney Eriksen proposes the following." Do you see that? A. Yes.

Q. This too talks of a credit that you had granted Norsk Hydro. A. Yes.

Q. Do you think this then is inaccurate also? A. Sure. Sure.

Q. You don't remember receiving a letter which inaccurately described your credit and protesting about it?

A. No, but I remember, and I testified already, that
10578 the question came up upon the desire expressed by Norsk Hydro that we should buy up bonds in Switzerland and that under some credit agreement, and that was not carried through because we thought it couldn't be carried through.

Q. Do you remember that soon after you got this letter and perhaps pursuant to the last paragraph—will you note the last paragraph?

(The witness examined the document.)

Q. Do you remember that soon after that you had a board meeting and resolved that if a credit could be secured the

management was authorized to make the subscription to the increase? A. I remember we had a board meeting soon after the middle of May.

Q. I think it was May 19th. A. I think that's all right.

10925 MR. JACOBY: Would the reporter please mark Document 7645, Part 3.

(The document and translation referred to were marked for identification as Defendants' Exhibit No. 590-7645(3)-3.)

By MR. JACOBY:

Q. Will you please look at that. A. Thank you.

10926 (The witness examined the document.)

By MR. JACOBY:

Q. Have you read it? A. I have read it.

Q. Now, as you will notice, this purports to be a list made at around the time of the general compensation, of the German securities held by Greutert at that time. A. Yes.

Q. Now, let's go through the list. Does the firm Greutert still own the first item? A. No.

Q. When was that item sold? A. In the year '40.

Q. The last two items—the Laenderbank I think you talked about before. These are the two Laenderbank holdings which now the firm Chemie has. A. That's correct.

Q. What about Dynamit Nobel, the one right above Laenderbank? A. I think we have this small parcel still.

Q. Still have those? A. Or at least part of it.

Q. I think that we mentioned it before during the deposition. Do you know the connections of Dynamit Nobel with I. G. Farben?

10927 A. No, I know there were formerly agreements between them. In some way the firm is connected with I. G. Farben.

Q. What about the next item, Rheinstahl?

MR. WILSON: Did you say you still have the Nobel?

THE WITNESS: Well, I believe we have some. I think we tried a long time already before the war to sell them, but it was impossible. They are not marketed in Switzerland.

By MR. JACOBY:

Q. What about Rheinstahl, the one right above it? A. That I am not sure.

Q. Beg pardon? A. I am not sure whether we have this small parcel still, or whether it could be reduced or sold. I am not sure about it.

Q. Of course you are familiar with the fact, aren't you, that I. G. Farben and Rheinstahl had— A. Had an interest.

Q. Had close connections. A. Had an interest. I don't think it was the majority.

Q. Now, what about the item—going up—Deutsche Gold- und Silberscheideanstalt? Do you still have that block? A. No, not to my recollection.

Q. Do you recall when you disposed of it? A. I believe it was—the block was, or at least the greater part of it, sold to I. G. Chemie in the course of this
10928 general compensation transaction.

Q. Does I. G. Chemie still hold that block now? A. I have not in mind the same nominal value, but they have a block, no doubt, of Scheideanstalt, maybe less than that. To my recollection it is less. And as I do not remember that we have still any in our portfolio there, I come to the conclusion—I do not recollect it—that the other part must have been sold before by Greutert.

Q. Well, what about the last item now, 3 million Bayerische Stickstoffwerke? A. No, we don't have that.

THE MASTER: What is that?

THE WITNESS: They are no longer in existence in Basle, neither I. G. Chemie nor Sturzenegger.

By Mr. Jacoby:

Q. When did you get rid of them? A. Well, I am not sure about it. To my recollection, anyhow, before the war, '38 or '39, I believe.

Q. Did you sell them for cash or did you make an exchange for other stock? A. To my recollection it was an exchange business.

Q. Exchanging with what? A. I believe exchanging against I. G. Farben shares.

Q. Do you recall the approximate number of I. G. Farben shares you got in return for the Bayerische Stickstoffwerke?

10929 A. No, no, I cannot recall that. Well, if there was an exchange, which I believe, then that has very probably been carried through by application of the then-existing quotations of both values.

Q. Well, from your recollection of quotations of these two companies, would you say that the I. G. Farben shares were quoted higher on the market, so that you would get a smaller number of Farben shares, or the other way around? A. That is just what I cannot recollect.

The Master: What does the percentage column indicate?

The Witness: I think that is, in the year '37, the then existing quotation or evaluation or estimation.

Mr. Wilson: In marks?

The Witness: In marks, yes.

The Master: I see.

The Witness: Well, the marks—it is expressed in per cent, but as all shares have a mark face value, you can reckon out the mark value.

By Mr. Jacoby:

Q. As the Master just asked you, then you would come, on the Bayerische Stickstoffwerke, to a price of 125? A. Yes.

Q. Now, in your recollection, what were the Farben prices around that time? A. I believe higher.

10930 Q. So do you think it is—suggesting a figure—that you got— A. Less.

Q. That you got 2½ million Farben shares in exchange for the Bayerische Stickstoffwerke? A. Well, I believe it was less, because I think—

Q. Well, it is less than 3 million. I said 2½ million. A. Yes, I believe so, though I must say I cannot recollect clearly the transaction. Therefore, it is difficult for me to make the statement. I believe it was such an exchange, but that is absolutely sure, that they are no longer held, neither by I. G. Chemie nor Greutert-Sturzenegger. That I am certain of.

Q. Now, that figure of Farben shares you got in exchange, of course, is totally independent of the figure of 2 million Farben shares held by Chemie we talked about this morning? A. Oh, yes, they are not the same kind of shares.

Q. And the 2 million Farben shares held by Chemie are still held by Chemie today? A. I am not absolutely sure. If they were, they must be shown on this chart attached to the report of the SCO. I remember there is a chart where I think the whole portfolio of I. G. Chemie as it existed at the time of the examination is mentioned, and if they were still in the portfolio, of course they are in this chart. I recollect the parcel of these

10931 2 million being in the portfolio of I. G. Chemie during long years.

Q. During what? A. During long years, during many years.

Q. The portfolio was made up in '47, and we will come to that later. My recollection is that they are not listed in the portfolio. A. Well, then in this case they must—

Q. In '47. Now, you said this morning that you—that I. G. Chemie held those two million Farben shares at a certain time. A. Yes, that is—

Q. When were they sold? A. That I do not recollect. I think if they are no longer in the portfolio they probably were sold in '39 or so. I am not sure.

Q. Were they held by a Sekretariat of Greutert at one time? A. I don't think so. My recollection is that during long years they were held by I. G. Chemie, though it could be possible that before the acquisition by I. G. Chemie they could have been held with Greutert in a Sekretariat.

* * *

11140 MR. JACOBY: Will the reporter please mark Document 13144.

(The document and translation referred to were marked for identification as Defendants' Exhibit 618-13144.)

THE WITNESS: Do you want me to read it?

MR. JACOBY: Could you, please?

THE MASTER: Do you want him to read it all, Mr. Jacoby?

MR. JACOBY: Well, I think it might be necessary.

THE MASTER: All right.

THE WITNESS: I have read it, Mr. Jacoby.

By MR. JACOBY:

Q. Now, the last paragraph, as you will note, indicates that on the following day, May 16, 1940, I. G. Farben was to notify D. A. Schmitz if possible, so that urgency is required. You see, the previous exhibit was a telegram to your bank for D. A. Schmitz.

Now, does the application, particular text of the application,—by that I mean the formal language which is indented and sets forth what the particular application is—at the bottom of page 3 of the German text, top of page 4 of the English translation—"requesting you to give your agreement to the planned procedure and at the same time to hold out to us on principle prospects of a permit for the
11141 for the actions which result from the transactions and may be subject to authorization."

Does the language of that application, for approval on principle refresh your recollection as to what kind of approval was received the middle of May? A. No. I mean it was, as I testified before, known to us in Basle that any

transaction of some importance in Germany which involved relationship to foreign corporations, as I. G. Chemie, needed the approval of certain authorities, and I think we were aware of the fact that the contemplated cancellation of the dividend guarantee contract and the connected matters needed some German approval. Now, we didn't interfere. That was now up to the German gentlemen of I. G. Farben to tackle these matters.

Q. Did any of the gentlemen of I. G. Farben inform you of the reasons they had to give to the German authorities for obtaining such approval? A. I didn't get the question.

Q. Did any of the German gentlemen of I. G. Farben tell you what reasons they had to give to the German authorities and how they had to justify the application for approval? A. No, and I don't think we were ever informed of that. May be that in a general line, of course, they said, "Well, we, of course, must put the matter before our authorities
11142 for the good of the cause as well as we can." underlining the German viewpoint. That's understandable. Otherwise they wouldn't have got any permission.

Q. Does the language on page 3 of the original, which is also page 3 of the translation—"We know that our American friends are handicapped in their work for us by the existing ties and believe to have to help them in defending our interests by carrying through the said measures recommended by them to us"—does that refresh your with respect to the statements made by I. G. Farben? A. No, and my conviction and firm belief is we have never been informed, because we didn't care about these matters. That was up to the I. G. Farben people to put that before their own authorities and argue it as they thought it best for the cause.

* * * *

11143 The Master: By the way, Mr. Jacoby, you haven't had him identify the signature on 618. Do you intend to do that?

The Witness: Oh, there are no signatures.

MR. JACOBY: It is stamped. It is indicated on the translation. It says "stamped."

THE WITNESS: It is probably a copy for the files.

MR. SCHWARTZ:

11198 Q. Naturally. Mind you, I wouldn't hold you to every phrase and certainly not to the translations. A. Yes.

Q. But to save time, gentlemen, may we take it then that I may read into the record our translation of that, subject always to your right to criticize our translation?

MR. WILSON: You go ahead. I would want to ask some questions which I will reserve for cross examination.

MR. SCHWARTZ: I am going to ask some questions about it, but he having said it was substantially correct I would like to have that in the record.

THE WITNESS: I mean I cannot check now. I have not every detail in my mind.

By MR. SCHWARTZ:

Q. I understand. A. I may be mistaken.

Q. I won't hold you— A. As to the whole, in substance it seems to be correct.

Q. Right. But roughly speaking, you think it is correct.

MR. SCHWARTZ: Therefore, may I direct the reporter to copy our translation of that page and a fraction? Is that all right, Mr. Wilson.

11199 MR. WILSON: That's all right.

(The portion of the SCO report referred to is as follows:)

f) Societe Auxiliaire de participations et de Depots S.A. a Lausanne.

In 1939 Greutert & Cie. established Sopadep as an evacuation company. The share capital amounted to fr. 1,000,000.00 and was taken over by the following shareholders:

C. Mollwo, Prilly.

Nom. fr. 550,000.00 on January 17, 1939, at par.

Mollow paid fr. 294,000.00 from funds of his own and got an advance of fr. 256,000.00 from the Perpetua A.G. This advance was reduced to about Fr. 250,000.00 by the difference between dividend distribution and advance interest.

Estate of Dr. G. C. DuBois, Peseux.

Nom. fr. 175,000.00 on July 15, 1940, at par.

The Perpetua A.G. gave him an advance that he repaid in part from funds of his own.

Today 50 of the shares of the deceased Dr. DuBois are in possession of K. Cassani and 125 shares are in the possession of the Industrie-Bank A.G. These two shareholders paid the purchase price at par from funds of their own in cash.

Perpetua A.G., Luzerne.

The rest of the share capital of Sopadep (that is, fr. 275,000.00) is with the Perpetua A.G., which took it over from

11200 the estate of Ed. Greutert. Nom. fr. 256,000.00 Sopadep shares are pledged for the advance granted to Mollwo by Perpetua.

In the event of death there is an option right at par on the Sopadep shares of Mollwo and Cassani in favor of the Perpetua A.G., Luzerne.

Individual transactions in securities were carried out by-way of Sopadep, which was intended as a "sidetrack" company during the war for Sturzenegger & Cie. These transactions involved securities of companies of the I. G. Chemie-Ed. Greutert-Sturzenegger & Cie. group. At the end of 1945, for instance, the following was in the portfolio of Sopadep:

3,000 I. G. Chemie common shares, 50% paid;
40,000 I. G. Chemie preferred shares, 20% paid;
600 shares of Perpetua A.G., Luzerne.

Its principal creditor at this time was Sturzenegger & Cie. with about fr. 600,000.00.

In connection with the financing of the Industrie-Bank A.G., the Rigidor A.G. and the Societe Auxiliaire de Participations et de Depots S.A., which together show a share capital of fr. 6,500,000.00, there still exist advances today of a total of fr. 1,232,000,00, for which shares in a total amount of nom. fr. 1,600,000:00 are pledged.

11201 By Mr. Schwartz:

Q. What is an evacuation company? I think our translator has translated the same work at another point as a "sidetrack" company. A. Perhaps not quite the same.

Mr. W.: son: Those are not synonyms, are they?

The W.: ess: No. Evacuation—As you probably realize, Switzerland in the midst of the continent at war was in a very delicate and dangerous position, and from the beginning one was afraid in Switzerland that something could occur any time—what occurred to Norway, for instance, and other people—that we would one day or the other be overrun. And so many Swiss business circles and private circles tried to safeguard them against such a possibility in some way. And there were companies which transferred their domicile to somewhere. There were other companies which located safe deposit boxes in some mountain resort or on the lake of Geneva.

And this term "Evakuations-Gesellschaft" refers to such considerations. I mean the company was founded I think before the outbreak of the war but at the time where the international tension was already considerable. And I think as I look back that it was thought then by us: Well, if it should come to the worst, it would be desirable to have at some removed place, other part of the country, a corporation which

11202 was in close connection with us, which could if necessity arose carry through certain transactions where money or securities could be deposited in case of need, and

so on. And this term "Evakuations-Gesellschaft" is in this line of thinking I tried to explain—a well known term in Switzerland in those times.

By Mr. Schwartz:

Q. All right. What is a "sidetrack" company? I think it must be another company in the circle which has been translated by our people, as described by the SCO, as a "sidetrack" company. A. Well, I do not know the German expression.

Q. We'll come to it. A. Well, it seems to me just "sidetrack," the extra term, has some—

Q. All right. Let's—

Mr. Wilson: What is the word in the German text that is translated "sidetrack"?

Mr. Schwartz: It's not in this one. It's another company. And when we come to that Mr. Sturzenegger will have the German.

Mr. Wilson: But the word "sidetrack" is in the English translation here.

Mr. Schwartz: Oh, fine. Then he can find the fifth line from the bottom on that page 20.

11203 Mr. Wilson: It's in quotations in this translation.

The Witness: Ausweichsgesellschaft.

Mr. Schwartz: That's it.

The Witness: It's not "sidetrack" perhaps. It doesn't seem to me to be the right translation. "Ausweichsgesellschaft" means a company which could be used in case of need instead of another, but I do not find the proper translation for it. For instance, to try to circumscribe it, if an aggressor comes forward, then may be the party which defends against the agressor has to go back, has to go, and that would lie in the same line.

By Mr. Schwartz:

Q. Is there the connotation of a company that you use when you don't want to appear in the transaction yourself? A. No.

Q. A representative, dummy company? A. No, not at all.

MR. WILSON: If your Honor please, I will ask Mr. Sturzenegger to read that paragraph in which the word "sidetrack" appears. Read the whole paragraph before you attempt to define "sidetrack."

(The witness examined the document.)

THE WITNESS: I have read it, and in my opinion it refers to the same idea that is expressed by the "Evakuations-Gesellschaft" on the beginning of this page. It means that

11204 this company could in case of need be used if the headquarters Basle, for instance, was overrun by the Germans.

THE MASTER: We have an American phrase sometimes used called a "standby" company, meaning a company to operate, to stand by to operate, in case of need.

THE WITNESS: Yes, that's much more in this line.

MR. WILSON: Well, if your Honor please, I wonder if I could ask the witness whether in view of the first sentence, which says it was intended as a sidetrack company during the war for Sturzenegger & Company, whether you would say from that, Mr. Sturzenegger, that if Sopadep held 3,000 I. G. Chemie common shares 50 per cent paid, was it in that sidetrack position holding them for Sturzenegger and Company or holding them for the shareholders of Sopadep?

THE WITNESS: No, these shares sold to Sopadep before to my recollection.

By MR. SCHWARTZ:

Q. Then you didn't mean that sidetrack connotes the use of a company as an agent or a representative? A. No.

MR. WILSON: Straw?

THE WITNESS: No, not at all.

By Mr. Schwartz:

Q. Or for convenience where it is not desired— A. No, no, no.

11205 Q. All right. A. Just as I put it in case of necessity to have some basis.

Q. All right. A. Additional basis.

* * *

11214 By Witness:

That—well, I don't want to go on, but according to Swiss law I just wanted to mention that if some shares are pledged to some other party, this other party to which they are pledged don't acquire, of course, the voting right.

* * *

11224 By Mr. Schwartz:

Q. Mr. Sturzenegger, do you recall anything about meetings of Sopadep? Were there general meetings of the stockholders from time to time? A. Yes.

Q. Do you remember whether the stock was voted by the stockholders attending or was it customary rather to have one person act as a proxy for all the stockholders? A. Well, both cases may have occurred.

Q. You don't remember any customary practice?

11225 A. Well, I think the stock of the gentlemen, the physical persons being stockowners, were voted normally by them. And as to the Perpetua, I think Perpetua gave one of them proxies.

Q. I see. I wanted to ask you one more question about the assets. You recall there were 3,000 Chemie common, 40,000 Chemie preferred, 6,000 shares of Perpetua. Do you remember— A. No, 600.

Q. Sorry. 600. Do you remember any other assets that Sopadep had between 1939 and 1945? A. During the whole period?

Q. Yes. A. Yes, I remember that Sopadep once held a block of American I. G. Chemical Corporation "B" shares.

Q. And how large was that block? A. That was about I think 950,000.

Q. And it was holding that I think as a nominee for someone else, or were they its own assets?. A. Not nominee. I think they were under option in favor of Ed. Greutert & Company.

MR. WILSON: Did you say 950,000?

THE WITNESS: I believe so. At one time.

By MR. SCHWARTZ:

Q. Between 1939 and 1945? A. Yes, I believe so.

11226 Q. Do you remember the period? A. About—when was it?—1939-40 to my recollection. I'm not certain about the exact dates.

Q. Well, did it use its own capital of a million Swiss francs to buy the 40,000—you said that the 600,000 Swiss franc loan was probably deferred payment for the 3,000 Chemie common? A. Yes. I wasn't sure but I thought so.

Q. All right. A. Could be connected with that.

Q. Then it had a million Swiss francs capital? A. That's right.

Q. And its assets were 40,000 Chemie preferred, 600 shares of Perpetua and for a time you think some 900,000 A.I.G.? A. Yes.

Q. Well, that million Swiss francs capital surely did not represent the cost of those three blocks. A. No, certainly not.

Q. Well, then, did it have additional credits or loans? A. Yes. For instance, this "B" stock which was perhaps—yes, in figures the greatest asset, though only temporarily held by Sopadep. They were sold in such a way, to my recollection, that the countervalue agreed upon was

11227 debited to Sopadep, so that Sopadep didn't need for this transaction liquid assets.

Q. And the fact is it bought them on credit? A. Yes.

Q. And when it sold them the credit was wiped out? A. Yes.

* * *

11235 Q. Perpetua has never had substantial quarters of its own, am I right? It was once domiciled with Mr. Schaerrer. A. Yes.

Q. In Schaffhausen. A. Yes.

Q. Where Osmon was domiciled, I think. A. Yes.

11236 Q. 7 Fronwogplatz. And it was later domiciled in Lucerne? A. That's correct.

Q. At your auxiliary office there? A. That is correct.

Q. It has never had separate quarters, substantial quarters; is that right? A. Well, it had separate quarters during the time it was domiciled at Lucerne. There were several rooms rented.

Q. But they were your rooms in the sense that you and Chemie and Perpetua, and perhaps other companies occupied the rooms together? A. Well, they were rented, I think, by my firm and it was in addition—how should I put it—a subsidiary and evacuation place during the difficult period.

Q. Well, several companies shared the rooms together? A. Yes, as usually is done.

Q. Mr. Schaerrer is an associate of Mr. Schudel; is that right? A. I don't think so.

Q. You don't think so. They are separate attorneys, are they? They are both attorneys, are they not? A. They both are or were attorneys. I don't think that Schaerrer is still alive. I am not sure.

Q. You notice in the beginning of the third full

11237 paragraph there on page 22, it is said that during the first years Perpetua did no business of importance. A. Yes.

Q. And I suppose that refers to the period '31 to '38, because the next sentence refers to '38. A. Yes.

Q. Can you tell us what business Perpetua did do in that period '31 to '38? A. No, I have no recollection. It may have had just a small stock or so, nothing of—

Q. Did it engage in transactions for the Greutert firm?

A. Nothing of importance.

Q. Well, do you remember anything it did do? A. No, no, I think just holding some shares or so.

Q. Now, the capital increase in 1939 by 900,000 francs, that was taken over by Greutert, right, the company? Am I right? A. Well, it is said here, but I am not sure whether that is absolutely exact. I mean, the distribution as mentioned afterwards is in accordance with my recollection, namely that Greutert & Company held 700,000 and Sopadep 300,000.

Q. Yes. But I notice that that says "today" and that speaks, of course, of '47. A. Yes.

Q. So there was a possibility that between '39 and '47

11238 Sopadep was not yet an owner, and I was going to ask you when Sopadep became a 30 per cent owner of Perpetua. A. I believe right from the beginning.

Q. Right from the beginning? So— A. I mean from the beginning of—

Q. Of the capital interest? A. Yes, I believe so. I am not absolutely certain.

Q. So you think that it should rather be that it was taken over by Greutert perhaps formerly, but from that time on, about '39, it was: Sturzenegger, 70 per cent; Sopadep, 30 per cent? A. I believe so, I think—

Q. And at that time the registered shares were changed to bearer shares. Do you recall that? It is not—I don't think it is in the SCO report. A. I don't recall it. It may be.

Q. I have a note here from the Schweizerische Handels— A. I remember that in the later period they were bearer shares. I do not recollect whether they were before—

Q. Do you remember the purpose of the capital increase of 900,000 Swiss francs to 1,000,000? A. Well, I should say—but I am not sure about it—that it was the idea to create a company in Lucerne—that means another part of Switzerland, which too was considered then to be more sure than such a front city like Basle—to

11239 create a company with a capital that could carry through some transactions of greater importance.

Q. Well, was the specific purpose so that there would be a company which could give loans to the stockholders of other companies? A. Well, I couldn't say that.

Q. Like the other stockholders of Sopadep? A. I couldn't say that. That could have been done by Greutert, too.

Q. Beg pardon? A. That could have been done without this company.

Q. It was, in fact, done by Perpetua, wasn't it? A. That's right, yes.

Q. Perpetua financed— A. Yes.

Q. —purchases of Sopadep's shares and also, I think, of— A. Rigidor shares.

Q. Rigidor shares. A. That is correct.

Q. In about 1939-1940, did it not? A. Yes.

Q. Well, was that the purpose of the capital increase? A. Well, I do not remember what Mr. Greutert had in mind. It may have been that such things were, too, considered.

11240 Q. You didn't participate in the discussions of the increase of capital? A. Well, partly. I do not recollect the details, all the thoughts that went through our minds.

Q. Sopadep's ownership of 30 per cent had been unrestricted, without options, without agencies, without— A. Yes.

Q. —without any side agreements at all? A. Yes, that is correct.

Q. Do you remember whether the loans on the shares of Sopadep and Rigidor—no, I think they were loans on the shares of—yes, Sopadep and Rigidor— A. Yes.

Q. Were given, when Perpetua was still entirely owned by your firm, or when Sopadep was already the 30 per cent owner? A. That I am not sure. As I told you, I am not entirely sure about the dates.

Q. There is no mention, you have seen, of any individuals who owned shares in Perpetua, and yet at one point in the

first SCO there is a mention, if you remember, that Greutert and Mollwo got a parcel of Visca shares gratis, and that they later exchanged these Visca shares for Perpetua shares. Were Greutert and Mollwo ever owners of Perpetua shares? A. One of the gentlemen may have been. I don't think
11241 both.

Q. Well, let me show you that paragraph. It is the first SCO report of September, and the translation is on page 26, which might bring it to around page 13 of the German, I suppose—page 14 of the German text. A. Of the same report?

Q. Of the first SCO report, sir. You have the second. A. Page 14?

Q. Page 14 of the German text, about the middle of the page. A. I see.

Q. In translation on page 26. A. I see. Now, your question is, Mr. Schwartz?

Q. Can you tell us as to whether and when Greutert and Mollwo were ever stockholders in Perpetua? A. Maybe I mix it up. My recollection, though not absolutely certain, is that Mr. Greutert once owned Perpetua shares that probably were acquired by him in exchange for the Visca shares he had had before.

Q. Well, when would that have been? In the period before '39 or after '39?

Mr. Wilson: It would have to be before the end of '39. I mean, Mr. Greutert died in '39.

Mr. Schwartz: That's right.

The Witness: Yes, I think in the beginning of '39,
11242 because here it is stated on the other report that the capital increase of Perpetua was made in '39. And before this increase the company had only a capital of 100,000 Swiss francs, though I am not sure whether at this previous period already Mr. Greutert owned Perpetua

shares, or whether that occurred on the occasion of the capital increase during a short period.

* * *

11253 Q. On Rigidor, Mr. Sturzenegger— A. Yes.

Q. Will you turn to page 18 of this November SCO report, this one here. A. Page 18, yes.

Q. It is the same, I think, in the German text as in the English, and it begins in the middle of the page, does it not, with "e." Will you please read through the German text to the bottom of page 19. A. Yes.

Q. And I will ask you to confirm that it is substantially correct.

(The witness examined the document.)

THE MASTER: Auer is still living, isn't he?

MR. SCHWARTZ: I think so. He has filed a declara-
11254 tion with the SCO. He was certainly living then.

THE WITNESS: I have read it, Mr. Schwartz.

By MR. SCHWARTZ:

Q. You have? Can you confirm that it is substantially correct, Mr. Sturzenegger? A. Well, my impression is yes. I can not recall all the details given here, and it of course refers to this time, buf I don't think there are great changes.

11255 Q. Yes. Well, aside from the question of changes since it was written— A. Yes.

Q. You do think it is substantially correct? A. I think it is substantially correct, yes.

Q. And you have already seen the letter to Germann— A. Yes.

Q. —which was Exhibit 633, have you not? That was the death option that Perpetua held on the Rigidor shares of Mr. Germann. A. Yes.

Q. That is enclosure 32, incidentally, that is mentioned in the margin of this SCO statement. A. Yes.

Q. I would like to show you Mr. Auer's declaration which the SCO attached later on, at another page, in which Mr. Auer discusses his Rigidor holdings.

MR. WILSON: Mr. Schwartz, you haven't asked me to have a similar understanding as to this.

MR. SCHWARTZ: Oh, I would like to. Thanks for calling it to my attention.

MR. WILSON: I don't want to appear to be too generous about this. You might know I had a purpose in mind in precipitating this question. I don't think that I can commit myself to the first sentence of that text.

11256 MR. SCHWARTZ: Well, I submit that is not relevant. If you want to call the first sentence to Mr. Sturzenegger's attention and ask him whether he is sure he can confirm that one—I'll do that.

By MR. SCHWARTZ:

Q. Mr. Sturzenegger, the first sentence says: "Rigidor was established in 1928 with a share capital of fr. 100,000.00, which was entirely in German hands—that is, in the possession of Karl Roesch." That is correct, is it not? A. That I do not know. I mean that goes back to a time before I entered the firm, and to a time where, of course, I have no independent knowledge. But in the later period I knew that the company belonged, I mean the share capital, to Mr. Roesch, before it was sold to Mr. Mollwo.

Q. That is substantially the point. The point is, before '39 when Mr. Mollwo bought it— A. Yes.

Q. —it was owned by Mr. Roesch. A. Yes. But before that I do not know. I mean the previous, very early period.

Q. You mean how many years backwards Mr. Roesch owned it you naturally don't know? A. No.

Q. But so far as you do know, Mr. Roesch was the owner prior to Mr. Mollwo's buying it in '39?

11257 A. Yes, as far as I know.

Q. And you don't know that anybody else than Mr.

Roesch had been the owner before Mr. Roesch. A. No, don't know.

MR. SCHWARTZ: I would like, Mr. Wilson—
MR. WILSON: I agree otherwise.
MR. SCHWARTZ: You agree otherwise?
MR. WILSON: I will follow the same agreement otherwise

(The document referred to reads as follows:)

"e) Situation at the Rigidor A.G. Berne, with regard to the shareholders.

"Rigidor was established in 1928 with a share capital of fr. 100,000,000, which was entirely in German hands—that is, in the possession of Karl Roesch. At the beginning of 1939 the shares went over by purchase—at par—into the possession of C. Mollwo. On March 31, 1939, the company increased the capital to fr. 500,000.00.

"Shareholders of Rigidor are:

"*K. Cassini, Berne.*

Nom. fr. 2,500.00 on March 31, 1939, at par;
nom. fr. 47,500.00 on April 14, 1939, at par;
nom. fr. 50,000.00 on February 9, 1940, at par;
nom. fr. 100,000 total, holdings today.

"The purchase price was entirely paid from personal funds.

"*C. Mollwo, Prilly.*

11258 "Nom. fr. 100,000.00 on April 15, 1939, at par;
nom. fr. 20,000.00 on May 16, 1945, at par;
nom. fr. 120,000.00 total, holdings today.

"The fr. 100,000.00 concern shares that Mollwo acquired from Roesch. The price was advanced to him by the Perpetua A.G., Luzerne. This advance was reduced to fr. 45,000.00 by partial repayments and the difference between advance interest and dividend receipts. The fr. 20,000.00 acquired on May 16, 1945, come from the estate of Dr. Grieshaber and were paid by Mollwo direct.

"*Walter Germann, Basle.*

"Nom. fr. 50,000.00 on April 14, 1939, at par;
nom. fr. 30,000.00 on April 12, 1940, at par;
nom. fr. 20,000.00 on May 16, 1945, at par;
nom. fr. 100,000.00 total, holdings today.

"The nom. fr. 20,000.00 were taken over from the estate of Dr. Grieshaber. Germann got an advance from the Rigidor A.G., which he repaid entirely with personal funds.

"*Dr. J. Auer, Zurich.*

"Nom. fr. 40,000.00 on April 16, 1940, at par;
nom. fr. 35,000.00 on May 16, 1945, at par (estate of Dr. Grieshaber);
nom. fr. 75,000.00 total, holdings today.

"The price of all the shares taken over was paid entirely from personal funds.

11259 "*Mrs. Haller, widow, legatee of Hans Haller, Binningen.*

"Nom. fr. 50,000.00 on September 14, 1939, at par;
nom. fr. 30,000.00 on April 12, 1940, at par;
nom. fr. 25,000.00 on May 16, 1945 at par (estate of Dr. Grieshaber);
nom. fr. 105,000.00 total, holdings today.

"Haller got advances from Perpetua or Sturzenegger & Cie. which were entirely repaid from personal funds. The shares taken over by him are with Mrs. Haller, widow.

"In order to insure the continuity of the group of shareholders, there is an option right in the event of death of the shareholders also on the Rigidor shares in favor of the Perpetua A.G., Lucerne, which in turn will make the shares available to the individual shareholders. On the other hand, no privileges of purchasing before others have been agreed upon among the individual shareholders. The only Rigidor shares that are pledged are those of nom. fr. 100,000.00 of C. Mollwo for the Perpetua A.G. advance of fr. 45,000.00. This is the only advance today among the shareholders of the Rigidor group. The assets of Rigidor comprise bank

credits, securities, and accounts receivable, the latter in an amount of about fr. 800,000.00."

By MR. SCHWARTZ:

Q. Incidentally, there is is no doubt but what Mr. Roesch remained a German citizen until his death?

11260 A. That's correct, but with domicile—

Q. In Switzerland? A. —in Basle, in Switzerland.

Q. From about '28 or '29 when he came to work for Chemie? A. I think '31 or so, if I am not mistaken.

Q. '31, right. A. I am not certain.

Q. You know, too—I suppose since you know Mr. Mollwo bought these stocks, you know Rigidor in its pre-'39 period was 100,000 capital? A. Yes, to my recollection that's right.

* * *

11264 Q. Are the files of Perpetua located on your premises now? A. You mean after the dissolution of the Perpetua, because Perpetua doesn't exist any longer.

Q. Oh, yes, I knew that. When was it dissolved? A. When was it? '47 or '48.

Q. I see. Well, did the residue of its files remain with your firm? A. I believe so.

Q. And then they are among those which we may expect to see on the inspection of the documents of your firm?

11265 MR. WILSON: I object to the question.

MR. SCHWARTZ: May I ask it, your Honor?

THE MASTER: Are you talking about Chemie or Sturzenegger & Company?

MR. SCHWARTZ: No, the Sturzenegger papers, whether the Perpetua files are among that, and then I might ask where they might be, under what titles, and so on.

THE MASTER: Well, I don't—you are not objecting to that, are you?

MR. WILSON: No.

THE MASTER: That you may expect to see them—I assume that is what Mr. Wilson is objecting to.

By Mr. Schwartz:

Q. Are they then in your premises? I think you said yes to that. A. Well, I believe they are now in our premises.

* * *

11267 Q. Now, Mr. Germann's letter, or the letter to Mr. Germann, Exhibit 633—I take it that all the stockholders in Rigidor had given a similar option to Perpetua; is that not right? A. To my recollection, yes. The death option—I mean an option exercisable in case of death, and only then by one of the shareholders.

Q. Yes. But rather let us not characterize it completely. A. Yes.

Q. It is an option like that? A. To my recollection.

Q. So it would include the physical deposit of the shares as that one includes, would it not? A. Well, therefore I called it death option because I am not sure whether that was stipulated everywhere in the same language.

11268 Q. Well, isn't that customarily part of what a death option is, that the stock remain on deposit with the person who has the option? A. Well, normally or very often such an arrangement is made when the countervalue of certain shares is not paid, so they are pledged.

Q. That is what we call a pledge. A. Yes.

Q. But don't you notice that this even refers to such a pledge? Apparently Mr. Germann had a partial advance. A. Yes.

Q. You see, he had, did he not, some 100,000 nominal value? A. Yes.

Q. Right. And you notice that 50,000 shares are referred to as pledged. A. Yes.

Q. And isn't there in that language a real distinction between the pledge for the advance and the deposit pursuant to the death option? A. Yes, according to this letter.

Q. Right. And that is why I— A. Yes.

Q. —wanted to suggest to you that the pledge for an advance was a separate matter entirely—

11269 A. Yes.

Q. —and to ask you again: Does that help you to to be able to confirm that all the stockholders' death options included the provision about physical deposits? A. I believe, though I am not sure, maybe that this clause has been abandoned later on. I am not sure.

Q. By "later on" you would refer to a period after '47? A. Yes.

Q. Well, I am not interested in that. A. No—'47—it may be before even.

Q. Oh. Well, you see the SCO attached this document— A. Yes.

Q. —as an illustration of the option— A. Yes.

Q. —and I would naturally infer that that was the option in force at the time of the writing of the document. A. Yes, no doubt. I wanted only to point out I am not sure about it. I mean these letters or similar letters with other stockholders were certainly exchanged. I am not sure about the depositing of the shares later on.

* * *

11274 Q. Who is Mr. Cassani? I noticed he was a stockholder in something else, was he not? Perpetua, I think. A. No.

Q. No, of course not. Perpetua is—in Sopadep. A. In Sopadep, yes, he was.

Q. And we found in the Swiss Register that he was a member of the boards of one or another or several of these companies. A. Yes, of Sopadep he has been.

Q. Who is Mr. Karl Cassani? A. Well, that is a Swiss gentleman.

Q. Yes. A. Living in Berne.

Q. What is his business? A. Businessman.

Q. What kind of business? A. Oh, he is retired since many years.

Q. Elderly now?

11275 A. Yes.

Q. About how old? A. Oh, about 70 or more.

Q. About 70 now. And when he was in active business what was his business? A. I believe he was connected formerly with Volksbank.

Q. What bank? A. The Volksbank, Banque Populaire.

Q. Volksbank. And as what? An officer or stockholder, or— A. No, I believe officer or advisor or something he had to do. I do not know exactly his position there, but he was connected.

Q. I see. And was that his only business activity? Has he always been a banker in that bank, do you know? A. He has been a banker and he was, too, I believe, an expert in hotel matters, and as this bank, Volksbank, had especially owned many hotels and had granted mortgages on hotels, so I think his expertness had to do with this sector, this angle, of this bank's business.

Q. I see. How did he come to be introduced, to become a stockholder in one or two of these companies? A. I believe that it was offered to him by Mr. Greutert as he was a friend, on very good terms with Mr. Greutert.

11276 Q. I see. Something like, I think you have said, Mr. Grieshaber had been a close friend. A. I think Grieshaber has been a friend the same time; they went through school together. It wasn't the case with Cassani. They made acquaintance, I believe, on some business ground later on.

Q. I see. And Mr. Auer, I think you said, was also a good friend of Mr. Greutert's? A. Yes, even in a far way maybe related—well, very distantly.

Q. The others here—of course Walter Germann— A. —was a nephew.

Q. Was a nephew. Until '45 he was in the Greutert firm, am I not right? A. Yes.

Q. And he started with that firm about when? A. '35 to my recollection, about.

Q. And Mr. Auer we discussed. Mr. Haller has always been— A. Always.

Q. —with the Greutert firm? A. I believe right from the beginning.

Q. From the '20's or shortly thereafter? A. Shortly after.

Q. He is still there?

11277 MR. WILSON: Haller is dead. His widow is mentioned as a shareholder.

MR. SCHWARTZ: Of course.

By MR. SCHWARTZ:

Q. And Mr. Mollwo—we know of him as almost always having been connected with your firm, as well as with Chemie. He was an auditor or something. A. Well, with Chemie only as an auditor.

Q. Just let me retrace for a moment the Rigidor shareholders. Mr. Haller was an officer of Chemie for a while, was he not? A. Yes, he was a Prokurist.

Q. Prokurist. Simultaneously while he was with the Greutert firm? A. To my knowledge, yes.

Q. In what years was he a Prokurist for Chemie? A. In the '30's.

Q. In the '30's? A. Yes.

Q. For about how many years? A. Oh, that I do not remember. About five, six, or so. I am not sure about it.

Q. Of Sopadep we have already discussed Mr. DuBois, Mr. Mollwo, Mr. Greutert himself, and Cassani. Mr. Haller was an auditor in the very earliest time of Chemie, was he not?

11278 A. Was he? Well, I do not remember. That may be.

Q. I don't have Prokurists on this list. A. I see.

Q. Who was the Karl Pfeiffer who was a substitute auditor for a long period of time, '28 to '40, Mr. Sturzenegger? A. A long period, '28 to '40?

Q. Yes, Karl Pfeiffer. A. That must be a mistake.

Q. It struck me when I saw it here, but that is my note.

A Karl Pfeiffer— A. No, I know only one Karl Pfeiffer. That is the Karl Pfeiffer of Laenderbank, but I am sure that in later years and through the '30's he was not—

Q. You are right. It is a Mr. Sigel. I got the line wrong. But that Karl Pfeiffer of Laenderbank was an auditor from '28 to '33 or thereabouts, was he not? A. Well, I believe right in the early start period.

* * *

11282 Q. Mr. Sturzenegger, I think we closed with mention of Mr. Haller. A. Yes.

Q. And I wasn't clear as to just what you said, but Mr. Haller was with Chemie for many years, was he not? A. Yes, he was a Prokurist.

11283 Q. Yes, and he left as late as 1945, I think. A. Chemie?

Q. Yes. We have a note from the Swiss Register. A. I am not sure about that.

Q. That his powers of procuration were cancelled in May or June '45. A. I see.

Q. May 11, 1945, at the time that the powers of Fritz Brumm were cancelled. A. At the same time?

Q. Yes. They were published then. May 4, '45 there was an announcement, published May 11. A. I had a recollection that it was earlier, but I may be wrong. I am not certain about it.

Q. And that, I think, was the time Walter Germann came into the firm as the director or a director, I am not sure. A. That had nothing to do, because neither Haller nor Brumm were managers with I. G. Chemie before.

Q. Have both of them retired from business entirely? A. No. I mean Brumm—

Q. Haller and Brumm.

MR. WILSON: Haller is dead.

MR. SCHWARTZ: I'm sorry, I keep forgetting that Haller is dead.

11284 THE WITNESS: No, Brumm retired completely from business when he left I. G. Chemie. Haller remained as one of the collaborators within my firm until his death.

MR. WILSON: When did he die, Doctor, about?

THE WITNESS: About '46 or '47, I believe '47. I am not absolutely sure.

MR. WILSON: Let me help you a moment. I was there in '46. My recollection is that he was dead then.

THE WITNESS: Was he dead?

MR. WILSON: I did not meet him.

THE WITNESS: Well, he was ill a long time and couldn't come to the office. I have visited him and discussed matters very often at his home. For a long time he was at the hospital. It may be '46.

MR. WILSON: I may be wrong about that, but I do not remember meeting him.

THE WITNESS: I rather believe '46.

By MR. SCHWARTZ:

Q. Haller had been with your firm years and years ago? A. He was there when I entered the firm, and had been a long time before.

Q. And when did he go to Chemie? A. I think he was made a Prokurist in Chemie rather early. I think it dates from the time when, as you know, Chemie had rented rooms within the building of our firm.

11285 Q. In the early '30's? A. In the early '30's I believe.

Q. When he was a Prokurist in Chemie, did he continue to be an employee of yours? A. Yes.

Q. All through the time? A. Yes, through; there was no change.

Q. And when he left Chemie to be with your firm only did he go on pension from Chemie? A. No.

Q. Didn't receive any additional compensation? A. No. I mean his principal occupation, no doubt, was the occupation in my firm, I mean the Greutert firm, later on.

Q. During the time he worked with both, you mean? A. Yes.

Q. I see. What you are implying, are you not, is that he hadn't worked for Chemie so much of his full time as to have a claim to a pension or a right to a pension? A. Yes.

* * * *

11291 Q. Now, to return to Rigidor and the shareholders—

MR. SCHWARTZ: Mr. Wilson, I think it may help Mr. Sturzenegger if I show him a copy of this, which is very rough, but tabulates the SCO information. It isn't necessary to introduce it, partly because it is rough, partly because a much better one can be prepared after he comments on it. But why don't we just have it in front of us? I won't show it to the Master because I know your feelings about it.

MR. WILSON: Now, I have withdrawn my feeling about that.

MR. SCHWARTZ: Oh, all right. If you find an inaccuracy in it, please let it pass, because I won't be asking questions based on the facts in there. I will just use it to point out who are the stockholders and the dates and so on.

MR. WILSON: Do you think you ought to give it a number?

MR. SCHWARTZ: If you like.

MR. WILSON: I don't care. Just for the orderly presentation.

THE MASTER: I would prefer to have it given a number,

11292 Mr. Wilson, if it is possible, the reason being that we can locate it. Would that be agreeable to you, Mr. Schwartz?

MR. SCHWARTZ: Yes, indeed.

(The document referred to was marked for identification as Defendants' Exhibit No. 638-24997.)

MR. WILSON: Excuse me a second, Mr. Schwartz.

(Discussion off the record.)

MR. WILSON: Go ahead, Mr. Schwartz.

By Mr. Schwartz:

Q. You notice, Mr. Sturzenegger, it is kind of chronological, the original stockholders, and then the next double column shows some further shares— A. Yes.

Q. —purchased by four of the six. Then the next set of columns shows these purchases from the Grieshaber estate. A. Yes.

Q. Now, in connection with Grieshaber and the purchases from his estate—

Mr. Schwartz: Incidentally, Mr. Wilson, I hope you understand this is designed, and is, I am sure, only the SCO information, you see, so it contains no—

Mr. Wilson: I see.

Mr. Schwartz: If there is anything else it says "Probably" or "Inferred" or something like that.

Mr. Wilson: I see.

11293 By Mr. Schwartz:

Q. Mr. Grieshaber, Mr. Sturzenegger—do you understand that when he was a shareholder from '39 to '45 he, too, was subject to the death option as were the others? A. Yes, I understand so.

Q. Do you know whether he got—you see, I asked that because the SCO, not listing him as a present stockholder, did not say anything about his option. You understand. A. I see.

Q. So that is why we say "No information." A. Yes. No, to my recollection it was the same situation.

Q. Right. Now, do you remember whether he had taken an advance credit for any part of it? A. I believe so.

Q. For about how much of his total of 100,000? A. Well, that I do not recollect. I think the greater part.

Q. The greater part. And it was repaid, I suppose, by the proceeds of the sale to the four who bought it? A. Yes, to my recollection. Q. Now, the next stockholder is Mr. Cassani. A. Yes.

Q. And that brings up not the question so much about his credits or pledges because it is stated that he paid from
11294 personal funds. Incidentally, can you corroborate that statement of the SCO? Do you recall that Mr. Cassani paid from personal funds? A. Yes, I recollect that.

Q. As well as the other cases where he bought stock in the other corporation, Sopadep, I think? A. Sopadep? Yes.

Q. Well, but his purchases do bring up the question of the four purchases that you see were made in 1940. You notice that the first column—the purchases in '39 total only 350,000 of what was a capital of 500,000. The second column shows four purchases by—

MR. WILSON: Mr. Schwartz, you are counting the quantity of all of these individuals?

MR. SCHWARTZ: This first column is a total of 350,000 purchases in '39.

THE WITNESS: Yes, but the capital was never, at no moment, 350,000.

By MR. SCHWARTZ:

Q. Right. The capital was always 500,000? A. Yes.

Q. Right. A. After the increase from 100,000.

Q. Right. But the following year, on those four dates shown in the second column, Cassani, Germann, Auer, and Haller
11295 bought smaller amounts— A. I see.

Q. —which I think total 150; 50, 30, and— A. Yes, that's correct.

Q. And thus the totals in the third column are 500,000. A. Yes.

Q. Now, those four purchases—do you remember whether those had been held by someone else before they were issued or sold in '40? A. No.

Q. Or were they initial issues? A. Initial issues.

Q. Well, you say it in a tone as if it is obvious. It is not, unless it was the fact. There could have been a prior owner

between '39 and '40 who then sold, on his death or on his desire to sell or something, those four blocks to those four people. A. Yes. Well, I do not recollect other owners than the mentioned ones.

Q. All right. A. I do not remember now why this additional lot was acquired by these gentlemen later on, because they are—apparently there is a certain space of time between them.

Q. Yes, there is a year between the issuance of the first 350 and second 150, or roughly a year because they vary.

11296 A. Is it explained somewhere in the SCO Report?

Q. No, these are merely the facts. They say, for instance, that Germann bought 50,000 and 30,000, and that is all, so we just show the passage of time and ask the question. A. I see.

Q. But you don't recall that 150 or any part thereof sold in '40 to those four people was owned by anybody else before? A. No, I don't recollect it.

Q. Now, then, the next stockholder, Germann—going across the page to his column of credits, you notice that he got an advance from Rigidor, whereas the others got advances from Perpetua or Sturzenegger. Now, an advance from Rigidor for Rigidor stock would, of course, be a purchase on credit, practically, wouldn't it? A. Yes.

Q. Right. A. Is it said that he got the advance from Rigidor?

Q. Yes. A. I have no independent recollection how it was made then.

Q. That was in the long quotation. Let me read it to you.

MR. WILSON: I remember that it said that.

THE WITNESS: All right, that is all right.

11297 By MR. SCHWARTZ:

Q. Yes, it says, "Germann got an advance from Rigidor which he repaid later." A. Yes.

Q. Do you remember any particular reason why Rigidor should have sold to him on credit? A. No.

Q. And not Perpetua giving him an advance? A. No, I have no recollection, no idea why that was made.

Q. Now, looking at Exhibit 633, which is the Germann letter, I want to call your attention to the remark about 50,000 having been pledged April 14, 1939. A. What is the question?

Q. The question is: Am I right in interpreting it that where there was a credit the shares were first pledged with the person who gave the credit, and then after, say, the credit was repaid, it would then be deposited with Perpetua, the holder of the death option?

MR. WILSON: Excuse me a moment, your Honor. I am not sure that I understand whether Mr. Schwartz is inquiring about Walter Germann's transaction or whether he is developing a general course of conduct with regard to hypothecating the shares as collateral for a credit.

MR. SCHWARTZ: Generally. First I would like to have

11298 Mr. Sturzenegger understand my interpretation of that.

MR. WILSON: Yes.

MR. SCHWARTZ: Just to pave it, you see.

By MR. SCHWARTZ:

Q. Am I not right, Mr. Sturzenegger, that certainly implies that where there was a credit the shares were first pledged with the person who gave the credit, and the inference is that after the pledge is repaid, the credit is repaid, then they will become deposited? A. Yes.

Q. Because in almost the same sentence they say "deposited with us." A. Yes.

Q. "In view of this agreement the mentioned shares will remain deposited with us—that is also after the release of the 100 shares pledged on April 14, 1939. . ." A. Yes, in

order, apparently, to insure this death option right of Perpetua.

Q. To secure it? A. Yes.

Q. And that was the general pattern, was it not, that where there was an advance the stock would first be pledged with the person who gave the advance. If and when it was repaid it would still remain out of the hands of the stockholder and deposited with Perpetua?

11299 A. I mean— in this remark you refer, I understand, to the Rigidor company and the picture there.

Q. I would like to generalize it because in other cases it may have been different.

MR. WILSON: Looking at 633 there—is that what you have?

THE WITNESS: 633, yes.

By MR. SCHWARTZ:

Q. Oh, no, this is a Perpetua letter. A. This is Perpetua.

Q. And Perpetua is saying in effect, "We have a death option and the shares will remain on deposit with us." A. Yes.

Q. And they say—

MR. WILSON: What is the date of that?

By MR. SCHWARTZ:

Q. —"We will have the deposit after the pledge is released as to the portion that is pledged for a credit." A. Yes, according to this document.

MR. SCHWARTZ: Right.

MR. WILSON: What is the date of that?

MR. SCHWARTZ: April 12, 1940.

MR. WILSON: It refers to 160 shares, doesn't it, of Rigidor?

MR. SCHWARTZ: But 100 of them they refer to as pledged,

11300 you see.

MR. WILSON: What is the par?

MR. SCHWARTZ: Par of these was 500, you see, so he had 80,000 nominal capital and the day he bought the 30,000 on April 12, 1940, they write this letter and say the 160 shares, which are 80,000, are subject to the death option, but 100 of them are pledged and after they are finished being pledged for the credit they will have them on deposit for the death option.

MR. WILSON: Does that coincide with your far right column in which you say "50,000 pledged"?

MR. SCHWARTZ: Yes, 100 shares at the nominal 500.

MR. WILSON: That's right; I forget that.

MR. SCHWARTZ: Yes. And you notice, since we didn't know and the SCO didn't tell us about a release of those shares, we have a note.

By MR. SCHWARTZ:

Q. Well, that is a lot of words, Mr. Sturzenegger, but are we clear that where there was an advance they were pledged with the person who gave the advance? A. Yes.

Q. But after the release by virtue of repayment of the advance, they would then go on deposit with Perpetua which had a death option? A. Yes, according to this arrangement. I pointed out, I believe already yesterday, that I am not sure in my recollection

11301 that this way of handling was continued, because I have no recollection that in the later years the depositing was made with Perpetua.

Q. But—you mean the later years after the SCO Report? A. Yes.

Q. Oh, we don't care about those for the moment. Since we are examining the facts as in the report, we only want those facts. A. Yes. Well, I am not sure. It may even be the depositing has been abandoned before that.

Q. I see. But whenever and if it was abandoned, it was a uniform arrangement for all the stockholders? A. Yes.

11304 Q. All right. I would like to pass to some general questions on Rigidor. A. Yes.

Q. In the year before Mollwo bought the total capital of 100,000 in '39, let's say from the time you first knew about the company, to '39, what did Rigidor do and what were its activities? A. I do not recall any specific activity. I think the company made just investments in some shares, handled financing transactions, perhaps. I do not recall.

Q. It was a client of your firm, I suppose, was it not? A. Yes.

Q. It was one of the corporations that did business with your firm and you did business through it. A. Well, I do not recall great activity.

Q. I am referring, of course, to activity other than
11305 is mentioned in other sections of the SCO on the circle. A. Yes.

Q. —because it did have something to do with Industriebank and it did have something to do with Visca. A. With Visca.

Q. But other things. What kind of assets did it have? What kind of balance sheets did it have? A. Well, it was a very small corporation with capital of only 100,000 francs, so I don't think the company was very active.

Q. We have seen companies with small balance sheets that had large assets on both sides. This was not one of those? A. No, that was not the case.

Q. What kind of transaction did it do? A. Well, just normal business transactions. I can not recall one specific transaction; therefore I couldn't make a statement. I mean, I think the company has just invested own funds in some shares. I do not recall that the company took loans in order to make a greater volume of business, except these transactions later on which you referred to.

Q. Which we mentioned, which were discussed? A. Yes.

* * *

11308 Q. I have a note, too, that at one point of time, at about '38, as was the case in Perpetua, the registered

shares of Rigidor were changed to bearer shares. A. About '38?

Q. Yes. A. Was that not at the same time when the capital increase took place?

Q. Of Rigidor? A. I thought so.

MR. WILSON: I thought that occurred in '39.

THE WITNESS: That occurred in the beginning of '39.

By MR. SCHWARTZ:

Q. '39, yes, and let's see the date it was published. It may be almost contemporaneous because it was at a meeting of December 1938. A. I think it was contemporaneous, to my recollection. It was done at the same time.

Q. And was there a particular purpose for the change to bearer shares? A. Well, I think the company, which in my recollection had been just a private company of Mr. Roesch, then was sold to Mollwo, and with that, of course, Roesch, from that moment on, had no connection any longer with the company, and the

11309 company served afterwards other purposes. And therefore the capital increase was made.

* * *

11315 Q. Then, if you notice, toward the end of the SCO statement on Rigidor, does it not talk of their assets right down here on page 19? A. I see.

Q. "The assets of Rigidor comprise bank credits, securities, and accounts receivable, the latter in an amount of about ~~fr.~~ 800,000." A. Yes.

Q. Do you remember what those accounts receivable were, from whom they came, from whom they were due? A. Well, the accounts receivable is the translation of the German word "Debitoren," and that apparently refers to the loans granted to some gentlemen who owned shares of Industriebank.

Q. I see. Yes, that is perfectly consistent, yes. And I suppose then—what is the German word for "bank

credits"? A. "Bankguthaben." It is not bank credits; it is just bank balances.

Q. Bank balances? A. Yes, that means just—

Q. I see. In other words, money.

11316 A. Money; money with banks.

Q. Well, do you remember what their money and securities were, or the amount of that? A. Well, that I do not recall exactly, but as to the securities I have in mind this parcel of Industriebank stock which was in the portfolio of Rigidor, and I think that was the bulk.

Q. All right. What else did they own, if anything? A. Well, in form of securities?

Q. Yes. A. May have been a couple of I. G. Chemie shares; I am not sure, maybe temporarily. I don't think much.

Q. Temporarily. When you say "temporarily," you mean that they were sold afterwards? A. Yes.

Q. And when they held such shares, did they hold them for someone else? A. No.

Q. Had they bought them on credit, do you know or remember? A. No, they had the—Rigidor had own means and own reserves. They didn't have recourse, to my recollection, to credits.

Q. So when they held such shares as you last mentioned, it was in their own right unrestrictedly?

11317 A. Yes.

Q. No options? A. No.

Q. When they were resold it wasn't pursuant to an earlier option? A. No, to my recollection not.

Q. What puzzles me tremendously—and for this purpose I would like to skip to Industriebank. You remember that the total loans to people to buy Industriebank shares came to about 1.8 million or 1.6 million francs? A. No, I believe less.

Q. But over a million? A. It may have been in the beginning, but after—

Q. Reduced? A. At the time when reductions were made, I think it is considerably less.

Q. It is considerably less now. The SCO said it was 900,000 now. They said it was a million-something then. A. I think it is much less.

Q. Well, perhaps today, yes, but— A. It may be there are some reductions later on after the investigation.

Q. It is perfectly possible. A. To my recollection it is much less.

Q. Will you turn to pages 15 to 17, and through 18—

11318 15 through 18 of that report, that second report, a little earlier than where you are now. A. Yes, page 15.

Q. Yes. A long section on Industriebank begins there. A. Yes.

Q. And first there is the history and the sale in '36-'37, and each stockholder's purchases are given, and along around page 18, the second paragraph— A. Page 18?

Q. Yes, it runs through page 18. There is a kind of summary of the whole thing. A. I see. Well, there it is said in this sentence that at the time the investigation apparently took place there were still in existence loans to the amount of roughly 900,000 francs.

Q. Right. And if you just run your eye over the various holdings you will notice that there were various repayments by various people as time went on. This is a reduction of the original— A. I see.

Q. —amount of loans. It is hard to total the original amount of loans, because the information isn't specific as to each one, but it seems certainly to have been over a million, 1.3 million or 1.8 million, or something like that. A. No, I don't think that it was so much, I mean 1.8.

11319 Q. Well, I think I can show you— A. It must have been over a million; that is correct.

Q. Pardon? A. It must have been over a million; that is correct.

* * *

11325 Q. So I will put down again 100,000 and then a blank. Then, lastly there is Rigidor, which owns 1,350,000 nominal. Now, totaling these, Mr. Sturzenegger,

it brings the total to 1½ million original investment and 1 million still outstanding. The SCO had totaled it 900,000 still outstanding, but it doesn't much matter. So you can see there were over a million, perhaps a million and a half original advances. A. Yes.

Q. And 900,000 or 1,000,000 or 800,000 still exist today. A. Not today.

Q. Now, where in the world— A. Not today. I mean—

Q. Oh, by today we mean at the time of the report. A. Yes.

Q. Where in the world did Rigidor get the money to make such loans or to have them now? It has always had a capital—well, until '39 it had a capital of 100,000. A. Yes, but then its capital was increased to—

11326 Q. To 500,000. But all of these loans were first made in—most of them were made in '36? A. Yes, but in '36 these loans were not made by Rigidor.

Q. All right, but Rigidor has them today. A. Yes.

Q. They were made by Visca, I suppose. A. Made by Visca.

Q. The SCO said Visca or Rigidor, which I take it means Visca first, and then Rigidor second— A. That is correct, because I think with Visca they didn't exist in '39 any longer.

Q. Oh, then—well, but Rigidor—I see. Then, in '36 the loans were made by Visca? A. Yes.

Q. The loans that were made in '39 when— A. Additional.

Q. —additional lots were distributed by virtue of the death of Mr.— A. Greutert.

Q. —Greutert, and even in '47 by virtue of the death of Haller— A. Yes.

Q. —were made by Rigidor? A. Yes.

Q. But where still did Rigidor get the money to make

11327 the loans in '39 and '47, and then to inherit the credits from the '36 loans? A. Well, isn't there some explanation for that in the SCO report?

Q. None that I could find. A. Well, I mean Rigidor got

a considerable sum transferred to the company via Perpetua on the occasion of the Visca liquidation.

11328 THE MASTER: Of what liquidation?

THE WITNESS: Of the Visca liquidation. And this constituted the relatively considerable means the Rigidor disposed of or had at that time and later on. I mean a company can have a capital of 500,000 nominal value and can have internal reserves double or a multiple of that.

BY MR. SCHWARTZ:

Q. Yes, but it doesn't get them out of thin air. With this capital of 500,000 you say it got considerable sums on the Visca liquidation? A. Yes.

Q. The SCO said of those that they came to Rigidor as the reserve for writeoffs and for pension obligations of leading gentlemen of Greutert & Cie. Now, I was going to ask you about that, but I had no idea that it referred to just money—well, certainly Rigidor didn't get a present from Visca, a gift? A. Well, not a present, but in some way Rigidor was a company to which considerable internal reserves from the preceding companies connected with Greutert & Company were transferred on the occasion of the liquidation of Visca.

Q. But I frankly don't understand. Visca had stockholders, and Rigidor had stockholders, and they weren't

11329 identical. A. No, certainly not.

Q. So one set of stockholders does not, in the nature of things, give another set of stockholders a large sum of money. A. No, but Visca, as you know, was very close to Greutert & Company. Mollwo and Greutert had been shareholders and I think even the greater part of the shares had belonged to Greutert & Company. So this company and whatever it had was very close to Greutert & Company. And when this company——

Q. By "very close," do you mean owned? A. Yes, partly.

Q. Who else owned it? A. Pardon me?

Q. Who else owned it? A. Well, Greutert and Mollwo personally.

Q. The two of them were the sole owners? A. Pardon me?

Q. The two of them were the sole owners? A. No. And Greutert & Company.

Q. Greutert, Mollwo and Greutert & Company were the sole owners? A. Well, may be—I have no very clear recollection—may be that Roesch in the meantime or so too held some shares or some sekretariat or konsortium, but it was always

11330 within the Greutert circle.

Q. Well, all of these are within the Greutert circle, and we are trying to establish the owners. You think Roesch, Greutert, Mollwo personally, the Greutert Company, and the Konsortium or Sekretariat? A. Well, I'm not sure. May be that once they were booked partly on those Sekretariat accounts. That may have been the case.

Q. Whose assets would have been in that Sekretariat? A. Greutert assets.

Q. Not Chemie's? A. No, not to my——

Q. The SCO has told us of your Sekretariats that they had primarily or largely Chemie assets in them. A. Yes. Well, I really do not recollect, and as I told you, exactly how it was. May be they called it Visca Konsortium or so and not one of the Sekretariats. May have been once that—well, as I told you, Roesch had seemed to have been involved too. All that I do not recall the details.

Q. This Visca Konsortium once had assets of Farben in it, and Schmitz, Hermann Schmitz, got a power of attorney over those assets, didn't he? A. Not to my recollection. This Visca Konsortium or what was it——

11331 MR. WILSON: There are two questions combined there. Can you straighten them out? One has to

do with whether—that is, what assets Visca held or the Konsortium held, and the other is whether Hermann Schmitz had a power of attorney with regard to Visca Konsortium assets. Now, can we separate those two questions?

THE WITNESS: Well, I may perhaps too point to the fact that Visca, as I think it is mentioned in this report too, in the very early period belonged to German stockholders, and it has been proved all by documents submitted to the Swiss Compensation Office that then the whole capital was bought back at the very early time from German shareholders. I think in 1930 or 1931 latest. And from then —And I mean if this part of the capital had been in such a Konsortium before when the Germans were stockholders, then it may have been that Schmitz had some power and had to do. But after they were——

BY MR. SCHWARTZ:

Q. After 1931 then the owners of Visca were—and may I recapitulate what you said—Greutert personally, Mollwo personally, and— A. And the firm.

Q. —Roesch personally, and the firm. A. To my recollection.

Q. And perhaps the Sekretariat or Konsortium which

11331A would have assets only of the firm's? A. I think so. I'm not absolutely clear.

Q. So these loans to the stockholders of Industriebank in 1936 were made by Visca— A. Yes.

Q. —with its assets,— A. Yes.

Q. —having the stockholders you mentioned. Then when it was liquidated, how was it that the moneys of Visca remaining on liquidation were given to Rigidor? A. As I recall it, the Perpetua carried formally through the liquidation. I think Perpetua took over the shares from Greutert & Company of Visca, all the Visca capital.

Q. For purposes of liquidation only? A. For purposes of liquidation.

Q. Only? A. And that too at a relatively cheap price.

Q. At a price I think it was of 1,700,000. A. I do not recall it. At least not the par value, but considerably less.

Q. Yes. And they realized— A. And realized at least par and a little more.

Q. I think the SCO said they realized three and a half million. A. Yes, something. And the difference in bulk —or

11332 the bulk of the difference—was transferred to Rigidor, to constitute there the considerable internal reserve of Rigidor which enabled Rigidor to finance these loans.

Q. Later loans? A. And acquisition.

Q. Later loans to Industriebank? A. Later loans and I think the taking over——

Q. Of a share— A.—of the shares, yes.

Q. Of a share of Industriebank? A. Yes.

Q. Nominal 1,350,000? A. Yes.

Q. But the SCO stated that the profits went to Rigidor, credited as a reserve for writeoffs and to a Sekretariat account for pension obligations of gentlemen of Greutert. A. Yes. That is—I mean that is a bookkeeping matter. The fact is that Rigidor got by this transfer as a result of the liquidation of Visca, got ample funds, more, considerably more, than the own capital of Rigidor. And now if you will look up the balance sheet of Rigidor, then you would have, according to the Swiss custom of making balance sheets, on the left side all the assets. Would mean the loans given to the individual Industriebank

11333 shareholders as accounts receivable, as I recall it, plus this block of 1,350 I believe Industriebank stocks.

Q. 1,350,000? A. 1,350,000, yes, face value. And some cash or whatever it was else. I don't think much. And that, of course, would have, if you take them together,

would amount to much more than the company's own capital.

Q. Yes indeed. A. See? Two and a half million or just to make a reckoning. On the right-hand side of the balance sheet then you have the own capital, 500,000, and a difference is then, of course, reserve. And this reserve may at the same time——

Q. Be used for investment? A. For taking over pension obligations and so on.

Q. So Rigidor got about two to two and a half million as the net on the liquidation of Visca? A. Well, I think the amount is mentioned. Can't be so much. But it amounts to approximately——

Q. Yes. A. At least——

Q. That was used or it was in the form of debts owing from stockholders of Industriebank and an investment in Industriebank? A. Chiefly the funds were used to acquire or taking

11334 over the loans already existing to the Industriebank shareholders and to making these——

Q. More loans? A. —some additional loans.

Q. Right. A. On the one hand. And acquiring this parcel of Industriebank shares.

Q. Now, that parcel of Industriebank shares that Rigidor owns as of the time of the SCO, they didn't tell us the price, and they didn't tell us the date. Now, did Rigidor buy that after the liquidation of Visca with money that it got from the Visca liquidation or was it at the original purchase that Visca had bought it and so it came to Rigidor from Visca already bought? A. That I am not sure. I think it was about the time when the Visca was liquidated.

Q. That that was bought? A. I believe so.

Q. Yes. A. Well, I'm not certain about it. Can be before, but not long before.

Q. Yes. When the five million capital of Industriebank was sold in 1936 the SCO states that it was sold in 1936-37

to a variety of shareholders, but 1,350,000 is not accounted for in the SCO statement as of 1936-37. They
11335 merely say Rigidor owns 1,350,000. A. Yes. They were acquired at one time by Rigidor.

Q. But they were not sold—that block then was not sold when the others were sold to the individuals? A. Not to my recollection.

Q. Kept with the owner, Greutert? Greutert & Cie.? A. I think so, and sold later on.

Q. And sold to Rigidor only after the liquidation of Visca? A. Or at about that time. May be before but not long before I think.

Q. The liquidation of Visca I think— A. Beginning 1939.

Q. —was the beginning of 1939? A. Yes, 1938 or beginning of 1939.

Q. Yes. So from 1936 to 1939 the block of 1,350,000 that Rigidor owned thereafter was still owned by Greutert as it had owned Industriebank prior to 1936? A. Well, I do not recall it exactly, but I think so.

Q. Now, if that was money of Greutert & Cie., I still don't understand how Rigidor has it. Does Rigidor have it as agent for Greutert & Cie.? A. No.

Q. It has it for itself? A. It has it for itself.
11336 Q. The block of 1,350,000? A. Yes.

Q. And it has for itself also the debts owing to it from the individual stockholders of— A. That's it.

Q. —Industriebank? But you said that this money was money of Greutert & Cie. A. Yes, that came out of this through Visca and these sources.

Q. Yes. Well, now, there are different stockholders in Rigidor. True they are not entirely different, but there are some in Rigidor. You have Cassani, Walter Germann, Jacob Auer, Hans Haller, Carlo Mollwo. A. Yes.

Q. They are apparently now the owners of this money which used to be Greutert's money. A. Well, on the other hand, you please remember these death options.

Q. Yes. A. I mean of course they are the owners of the —the shareholders are the owners of the company with all its assets.

Q. Yes. A. On the other hand, there is financially seen a limit to the profit of each one shareholder insofar as these

11337 already-mentioned death options in favor of Perpetua existed, and Perpetua was close to Greutert & Company.

Q. Couldn't the shareholders get together and liquidate and take this money for themselves? Do you think that could be prevented in one way or the other? A. Well, they are all people who know each other. Was never the intention to do it. Legally—they wouldn't do it.

Q. Wouldn't do it? A. No, wouldn't do it.

Q. So your firm which used to have this money and then put it with Rigidor has—to Rigidor's absolute ownership—has no feeling of uncertainty that it has lost the money? A. No. And some of—well, I do not remember how much, but some which was at the disposal of Rigidor was then actually retransferred for pension purposes to Greutert & Company I think.

Q. But Rigidor still owns this big block in Industriebank? A. Yes.

Q. And still has large debts from Industriebank stockholders? A. Well, they are—as I told you, they have been to my recollection further reduced.

11338 Q. Yes, but always as of this time, because we have to have one point of time to discuss. A. Yes.

Q. And, of course, Industriebank is by far the predominant owner of your firm? A. No.

Q. Certainly today.

MR. WILSON: No, no. I object to that question.

THE WITNESS: No.

MR. SCHWARTZ: All right. It's a matter of fact.

THE WITNESS: It has by far the largest financial interest.

MR. WILSON: Yes.

MR. SCHWARTZ: Right.

THE MASTER: Do you want to take a little recess?

MR. SCHWARTZ: Yes.

(Thereupon, a brief recess was taken.)

THE MASTER: Are you ready, Mr. Schwartz?

MR. SCHWARTZ: Yes, sir.

BY MR SCHWARTZ:

Q. Mr. Sturzenegger, will you turn to page 6 of this second SCO document? It's another section that begins: "In 1931 Mollwo . . . " A. Yes.

Q. Now, I'd like to skip a little bit because they are

11339 talking of Mollwo as trustee for Visca and in the next sentence they say what happened about that purchase and Greutert. But then Visca had been established in 1924. Do you see that section?' A. I have seen that. There, of course, I have no independent recollection.

Q. I mean it's very short. I only want to read three sentences, so let me read the whole thing to you. You follow it in the German. (Reading) "Visca had been established in 1924 and was under German control." A. Well, I do not find where it is. Excuse me.

Q. Two or three sentences after, "In the year 1931." Isn't that it? I'm sorry. Here it is (indicating).

You notice the earlier part of the paragraph talks about interest in Greutert. (Reading). "Visca had been established in 1924 and was under German control. In 1931 the"— A. It says here "influence," but I think it was——

Q. Doesn't matter much. (Reading) "In 1931 the entire block of shares went over to Ed. Greutert & Cie. to Sekretariat B. Although the share capital changed hands a number of times during the course of the years, it always remained in the hands of persons closely connected with

the Greutert/I. G. Chemie group. A 'he time''—and I take it that means at 1931—"the German shareholders of Visca were compensated by Greutert with transfer of I. G. Chemie shares

11340 in the ratio of one to ten." A. Yes.

Q. Now, can you confirm those two or three sentences that I read? A. Well, the translation or the fact or——?

Q. Well, first the translation. I gathered that you had. A. Yes.

Q. Then the facts stated. A. Well, to my recollection, as far as I am acquainted, it's correct.

Q. That's right. All right.

Mr. Wilson: Is that information which you have later acquired or did you currently know it?

The Witness: Mostly later acquired, because when I entered the firm in 1931 I of course was not acquainted with all these matters.

By Mr. Schwartz:

Q. But you later learned all this, and it's right, isn't it? A. Have learned. Well, mostly. Some of these matters were handled by Mr. Greutert personally, and so I am not acquainted with everything.

Q. All right. Now, first that the shares went to Sekretariat B in 1931. What was Seketariat B, Mr. Sturze-

11341 negger? A. Well, that was one of these items often referred to.

Q. But particularly what was it and what assets did it have and whose were those assets and so on? A. I don't recall the assets. May have been "B" shares. May have been other shares. I mean there were various transactions carried over these Sekretariats, amongst them Sekretariat B.

Q. Well, who owned the assets in it? A. Well, I mean I beg to refer to the statements made before to the whole Sekretariat complex—that it was a complex of bookkeep-

ing items, but financed chiefly by I. G. Chemie, partly by Greutert, and that formally the title and the right to dispose of belonged to my recollection to Greutert, whereas, of course, I. G. Chemie had something to say too because of the financing means involved in this matter.

Q. Naturally. And the profits would go to the persons whose assets were in it, in proportion to the assets they put in it? A. Well, there was not I think—if you look upon the whole complex of this so-called Sekretariat, it was in some way a combine, but as to portions indistinguishable

property of the firm.

11342 MR. WILSON: It was indistinguishable?

THE WITNESS: Indistinguishable, yes. I cannot say that three-fifths or so belong to I. G. Chemie.

BY MR. SCHWARTZ:

Q. I understand. A. I mean afterwards you remember when the whole complex was dissolved, reduced before gradually, and then completely dissolved, the remaining part went into the Grutchemie Konsortium where the proportion is nine to one.

Q. Nine— A. Nine-tenths I. G. Chemie and one-tenth Greutert.

Q. Can you tell us the rough proportion of ownership of assets in Sekretariat B? A. No, cannot be——

Q. Not even whether the greater part was Chemie or Greutert? A. No, I cannot.

Q. I think the SCO said somewhere the assets in these Sekretariats were primarily Chemie's. A. Well, I mean in so far that many assets were transferred from these Sekretariats to I. G. Chemie, in so far further that very large means of I. G. Chemie were involved. The other deposition day Mr. Jacoby showed me some balance sheets he had made up, and there it was clearly seen that in the early '30's and later on, especially the

11343 early '30's, I. G. Chemie had huge accounts receivable. That refers to the means deposited with

Greutert and used and applied in the financing of these various Sekretariat items, amongst others.

Q. And this Sekretariat B amongst them? A. Was one of these Sekretariat items.

Q. So I suppose you can agree that in all likelihood in 1931 a very large part of the assets in Sekretariat B were Chemie's? A. Means I couldn't make such a statement. I mean that the whole complex is in so far vague as the property was indistinguishable.

Q. But as to the sources— A. But as to the sources of financing, that no doubt I. G. Chemie had the greater part.

Q. So in 1931 when all of the Visca shares went into Sekretariat B, Sekretariat B was the owner of the shares? A. Well, Sekretariat B was a bookkeeping item.

Q. All right. Then the owners of the assets of Sekretariat B were the owners of the Visca shares? A. Well, as the bookkeeping items were formal items, the title, the legal title, to dispose of these items belonged to Greutert & Company.

Q. Oh.

11344 MR. WILSON: Before we get too far away from the point I want to ask about, because I don't have the SCO report with me, in the ratio of ten to one for the exchange——

MR. SCHWARTZ: Would you mind leaving that? I was going to ask about that in a sequence that I thought would be helpful. I'd like to take it up in that sequence.

MR. WILSON: All right.

BY MR. SCHWARTZ:

Q. Then as having financed primarily Sekretariat B, Chemie would be entitled to a primary share of the profits of the assets in Sekretariat B? A. Well, even that goes too far, as how it was handled on different occasions was quite different. I mean there were, for instance, as I recall it, blocks of shares or other assets carried on one

Sekretariat which were allocated at some time to Greutert or I. G. Chemie.

Q. I see. A. And that was not in one fixed ratio.

Q. Who else had been a source of financing Seketariat B? Anybody other than Chemie and Greutert? A. I think this was the principal source of finance, but in a way all means which were at the disposal of the firm Greutert could, of course, be used.

Q. Yes. But who else's were used? A. Well, as you remember, especially in very early

11345 periods, especially before the 1930-31, there were large deposits of I. G. Farben too.

Q. But not only before 1931. After 1931. A. Yes, but they gradually were reduced. And you will recall during the great compensation transaction they were completely, as in principle——

Q. By 1936-37 you feel they were greatly reduced? A. Yes.

Q. But they existed certainly in 1931 and to a declining degree from 1931 to 1936 you think? A. Yes.

Q. But then were Farben assets a source of the assets in Sekretariat B?

MR. WILSON: At any particular time?

MR. SCHWARTZ: At 1931 and the years——

THE WITNESS: Yes, may have been any other depositors also, any other clients' deposits with the firm.

BY MR. SCHWARTZ:

Q. You said they may and could. We know they could because you said any assets that Greutert had they could draw on. A. Sure.

Q. But were they for Sekretariat B? A. No, I couldn't make that statement.

Q. All right.

11346 A. I mean there were no specific funds applied for this or this Sekretariat, and, as I have in mind, those great balances I. G. Farben had once with the firm

Greutert in earlier period were to my recollection mostly applied to granting others German firms comected with I. G. Farben credits. That is seen from the winding-up transaction of the great compensation.

Q. All right. Now, then, on this business where it says the German shareholders—Oh, first, let me ask you who were these—No, we'll take it in the sequence as I previously suggested. The German shareholders of Visca were compensated by Greutert with transfer of I. G. Chemie shares in the ratio of one to ten. Now, that means, does it not, that for one share of Visca surrendered they got ten shares of Chemie? Right? A. According to that, yes.

* * *

11414 Q. Now, returning to Visca, we went off on its liquidation for a moment, Mr. Sturzenegger. The German shareholders with whom you made the exchange—A. Yes.

Q. Do you remember or do you know who they were or any of them? A. I believe they were people closely connected with I. G. Farben.

Q. Officers and individuals and things like that? A. Yes, or it may have been shareholders. I don't remember, but I think——

Q. Have you seen that list of people who are supposed to have been the stockholders in Visca at the time Mr. Euler visited the firm, in one of the documents that was introduced? A. I don't think so.

Q. Let me call off the names. This, incidentally, is Document 461, which was an exhibit, Exhibit 6 in the Euler deposition, 18 in the Merton deposition. It is the shareholders of Visca, very early I am sure. A. At what time was that?

Q. Beg pardon?

11415 A. What time?

Q. I was just going to say—no, 1926. A. I see.

Q. Yes. And it says, "Of the 1920 shares which then existed"—I think that is before the capital increase—yes,

that is before the capital increase, you see. In 1924, according to the Register, there were 1920 shares with a capital only of 960,000. A. I see.

Q. —Swiss francs. It was in 1926 that they increased it to 3 million with 6,000 shares. But perhaps the names will help you remember the '31 situation. Let me read them all to you: Michel, Bosch, Schluon or Schuon, Julius, Bueb, Schmitz, Warmbold, Krell, P. Seidel, O. Seidel, Roesch, Weibel, Gans, Heberlein, Greutert. A. I see.

Q. Do those names sound to you like among the stockholders of Visca who made the exchange in '31? A. Yes, yes. I can not remember whether now all of them, but certainly as you read them part of them sound like that.

Q. Did you know, as among those with whom you made the exchange, were there several members of Hermann Schmitz' family? His nephews, his nieces, his brother D. A. Schmitz? A. I don't think that D. A. Schmitz was amongst them.

11416 Q. But other members of Hermann Schmitz' family, nephews and nieces? A. Well, for instance, Pfeiffer could have been. I am not sure.

Q. Pfeiffer was a nephew? A. I think so.

Q. That is the Pfeiffer of Laenderbank? A. Of Laenderbank.

Q. Nieces, sisters of Hermann Schmitz? A. It could have been the case, too.

Q. Pfeiffer's mother? Would she have been Hermann Schmitz' sister? A. Well, I am not acquainted with the exact relationship. That could have been the case, too. I am not sure.

Q. Now, I didn't read on that list the names of Bohn— A. I do not recall it. I mean, it could have been among them.

Q. The name of Dehnel? A. I have heard the name, but I am not sure.

Q. Incidentally, the name of Roesch was on this list I read you. A. I see.

Q. Does that recall to you that Roesch was one of the stockholders of Visca before the exchange in '31? A. I can not recall it.

11417 Q. Now, the assets of Visca when it was bought in '31—do you remember among those assets stock in companies like Fiduziar and Providentia? A. I mean I remember both names, of course, and we had—I mean the Greutert firm—had business with, no doubt with both, a great business sometimes even. I am not sure whether now Visca held part of the capital at the time of those companies. So I do not know.

Q. Well, in this memo Mr. Euler reports in '26 that Visca holds all of the capital of Fiduziar, and Fiduziar holds all of the capital of Providentia. A. Well, that——

Q. And some of those people, some of those corporations, hold their shares for individual men of Farben. Did you understand that Visca was the parent of Fiduziar, which was the parent of Providentia? A. No, I do not recollect the connection. I recollect very well those other two firms, and that the situation was in later years different, for instance as to Providentia, because I recall a moment when Providentia was partly owned by Chemie and partly by the Greutert firm.

Q. It is said here that as to Visca the bulk of the accounts payable and receivable were with Greutert. Does that confirm what you said, that Greutert did great business with these firms?

11418 A. I think so.

Q. That was, of course, even before Greutert bought the firm? A. Yes.

Q. And it says, too, that Visca holds 3½ million of Farben shares. Did Visca— A. What value?

Q. Visca holds about 3½ million RM shares at a book value of about 50 per cent. A. Well——

Q. This was written in 1926. A. No, I can not recollect.

Q. And I wanted to ask you if you could recollect if

Visca came to Sekretariat B holding blocks of Farben shares. A. No, I can not recollect that. I have no idea.

Q. Do you remember that Visca came holding stocks which were valued at 6 million and 6 million and 12 million? A. No, that is quite impossible for me to recollect.

Q. Well, what did Visca have that made it worth an exchange on the basis of 10 to 1? A. Well, there may have been shares.

Q. You don't remember what they were? A. Well, if that was the case, then they would have been Farben shares. I only can not make a statement because I do not recollect.

11419 Q. I was wondering if you knew what Visca had when it came to Sekretariat B, what it had that made it worth while to buy it at a good price. A. No idea.

Q. And Fiduziar is said to have as its purpose the holding of moneys for pensions for Farben gentlemen? A. I think that is correct.

Q. Did Visca come to Sekretariat B with such moneys? A. Well, that I do not recollect. I mean I recollect that the Fiduziar Gesellschaft—I have seen somewhere in the books or correspondence—during a certain time administered large pension funds for I. G. Farben people.

Q. Did such pension funds come with Visca or one of Visca's subsidiaries when it came to Sekretariat B? A. Well, that I do not know, do not recollect.

Q. Then there is a note that Providentia as of this time, which is said to be a subsidiary of Visca, held 18 million RM Deutsche Solvay shares exchanged for 26 million I. G. shares. Did some such amount, either of Solvay or Farben shares, come with Visca to Sekretariat B? A. Well, I remember vaguely figures of about this volume in connection with a transaction between Solvay, the big Belgian firm, and I. G. Farben and I. G. Chemie. I think that I. G. Farben stepped out at some moment; then there was another agreement between I. G. Chemie and Solvay, and it was

11420 carried through not over Visca, but through the so-called Igesol Konsortium, which is mentioned in the report too, and that was now a Konsortium where real participants were in existence, I. G. Chemie and Solvay, and the financial matters were chiefly handled as a banking business through Greutert & Company.

Q. What date is the transaction you are speaking of? A. Oh, they were continued until, I think, '39 or so.

Q. And what was the upshot of it? Who exchanged what with whom? Chemie and Solvay exchanged what for what? A. There were very, very complicated transactions. I do not recollect the details. I mean, both firms—that is my recollection—each side for themselves put great amounts or assets together and pooled them, partly exchanged them.

Q. But you don't remember such volumes of securities coming with Visca when Visca was bought by Sekretariat B? A. No, I do not recollect that. I recollect that with Igesol Konsortium.

Q. Apparently Mr. Greutert was the active manager of Visca for some years before it came to the firm as owner. Did you know that? A. Well, he had to do, and I think he was a member of the board, too. Yes, I think so.

Q. And with him on that board was Mr. Heberlein. A. Yes, I believe to remember that.

11421 Q. And of Providentia, Mr. Greutert, Mr. Heberlein, Michel, and Schudel were the board, I think. A. Well, I think only in a relatively early stage or phase.

Q. Were Providentia and Fiduziar subsidiaries of your firm in the sense that you owned something which owned them after '31? A. Well, in some time—I do not recollect the date—the firm Greutert & Company owned half of the Providentia, and the other half was at some time owned by I. G. Chemie, and then at some later moment Greutert took over the whole, paying I. G. Chemie out.

Q. And Fiduziar—did you ever own that either directly or through Visca? A. No, I don't think so. Well, I am

not very much acquainted with Fiduziar, and it has been dissolved, I think, at the end of '38 or so.

* * * * * * *

11424 MR. SCHWARTZ: With your permission then, gentlemen, I will ask the reporter to copy in that paragraph.

THE MASTER: That is "d," page 15.

(The document referred to reads as follows:)

"The Industriebank was established in 1929 with a share capital of fr. 3,000,000.00. On September 24, 1930, there was an increase to fr. 5,000,000.00. The original fr. 3,000,000.00 were completely in the possession of German shareholders and were taken over from them by Ed. Greutert & Cie. at the end of 1930 and at the beginning of 1931, whereby the German shareholders were paid either in cash with sfrs. 3,580.00 per share of nom. fr. 1,000.00 or by exchange against 10 I. G. Chemie

11425 common shares. Greutert & Cie. took over at par the newly issued fr. 2,000,000.00 and thus possessed the entire share capital of the Industriebank. On December 31, 1936, the Industriebank shares went to various shareholders at a price of 60% by way of the Visca A. G. as intermediary. The price of 60% caused Greutert & Cie. a loss that was charged to Secretariat Account A. The reason for setting a price of 60% is the circumstance that the Industriebank always paid the shareholders only a 3% dividend. The decisive point for the sale of the shares was the letter from Visca, of January 8, 1937 to the individual shareholders in which the pledging of the shares, so far as the shareholders had received advances, is set forth, as well as the offer obligation to Visca and the price of the re-acquisition of the shares."

BY MR. SCHWARTZ:

Q. Now, in the period 1929-1930, Mr. Sturzenegger, it was apparently all German, was it not? A. Yes.

Q. That is before you took it. Now, do you remember the firm Greutert had anything to do with its establishment? Was it established through negotiations and for plans and purposes that the Greutert firm was acquainted with, had to do with as a matter of business? A. No, I think it was an independent establishment; and I believe that—well, I am not sure, but I think I heard that
11426 later on Greutert was suspicious that there could be a rival institution once.

Q. Was it established for Farben transactions and was it that Mr. Greutert thought that Farben might be giving its business to another private bank or institution? A. I have heard something once—I am not sure. I am not personally acquainted with these facts of the establishment.

Q. Who were these German owners that you bought it from? A. I think they were other German people connected in some way with I. G. Farben. I don't think they were the same, though.

Q. The same? A. The same you mentioned on the other list.

Q. As the group who owned Visca? A. Yes.

Q. But they were officers and associates of Farben? A. I think so, or in some way connected.

Q. Now, Mr. Wolfensperger was the sole manager and signatory of Industriebank? A. Yes.

Q. From the time it was organized. I think. A. Yes. Well, afterwards there were other signatories.

Q. Yes, I understand, but he was the first one? A. Yes.

11427 Q. And he remained the leading man or president of the Industriebank throughout, did he not. A. Yes.

Q. Did Mr. Greutert have anything to do—you said Mr. Greutert did not. A. I don't think in the beginning. Well, I'm not sure.

Q. Just to fix in your mind these figures, there were apparently 3,000 shares, 1,000 nominal each, which comes

to the 3 million figure that was the capitalization until the increase. A. Yes.

Q. Now, I would like then to address myself directly to the purchase of the 3 million by your firm. Now, first that was a purchase, was it, for the firm and not for anyone else; is that right? A. I believe so.

Q. No agencies, options, holdings for anyone else? A. No, not to my recollection.

Q. Now, you notice there it says that the German shareholders were paid Swiss francs 3,580 per share of nominal 1,000 or by exchange against 10 I. G. Chemie common shares. A. Yes.

Q. Well now, that exchange against 10, there is no doubt that this language means perfectly and plainly 1

11428 Industriebank share for 10. A. Ten I. G. Chemie shares.

Q. Right. And these common shares, you understand were 50 per cent common shares? A. Yes.

Q. Now, do you remember relatively how many of those shareholders took cash and how many took Chemie common stock? A. No, I cannot remember that.

Q. A large proportion one way or the other? A. I mean that is correct it was done this way, part the other way, but I cannot remember the ratio.

Q. Does it help you to remember by contrast with this against Visca that Visca was exclusively Chemie shares for Visca shares? A. No, I do not.

Q. Do you remember where the firm Greutert got the 50 per cent common that it exchanged with the Industriebank shareholders? A. Well, in some way they must have gotten it from I. G. Chemie.

Q. Well, naturally, but where its source of purchase, or had it subscribed to them itself, or had it gotten them from the I. G. Konsortium or from Farben or— A. Well, subscribed formally, I think probably the firm itself, though I do not recollect.

11429 Q. They, too, were taken up, as we saw, by the Farben shareholders. A. Yes.

Q. You don't know how Greutert got them from the people the SCO says took them over? A. No.

Q. I think you, too, confirmed that at least some of the 50 per cent paid went to Farben shareholders. You didn't know that it was the whole issue; is that right? A. I think so.

Q. Do you remember anything as to whether it got them from Farben? A. You mean the I. G. Chemie shares?

Q. Yes. A. I don't think so.

MR. WILSON: Are you testifying now from things you have learned later on?

THE WITNESS: Yes. Well, I am not sure. Therefore I chose those words.

MR. WILSON: I mean you were not a participant in this trade?

THE WITNESS: No, of course not.

BY MR. SCHWARTZ:

Q. However, your firm held this 3 million for several years?

11430 A. Yes.

Q. From '30-'31 to '36? A. Yes.

Q. You held it as your own property? A. Yes.

Q. But am I right you are confirming definitely that from '31 to '36 Greutert held what it had bought for itself? A. Yes; that is my conviction and recollection.

Q. Not for any Konsortium? A. No. That may be, that they were booked in a Sekretariat item.

Q. The increase of capital—you notice that it says there that Greutert subscribed for this itself. A. Yes.

Q. Greutert & Company took over at par the newly issued francs 2 million. Now, there again Mr. Ott told us that that was—the 2 million additional—taken over for a Konsortium. Would that have been a distinction from Greutert? A. Well, only booking-wise, bookkeeping-wise, to my knowledge.

Q. But you don't remember a booking to a Konsortium with respect to 2 million, the increase of 2 million capital?

A. No, but I am not sure whether they were booked directly or via a Konsortium, but my recollection is they belonged to Greutert and I do not recollect any Konsortium
11431 agreement, anything like that.

* * * * *

11432 Q. Mr. Sturzenegger, the price of the 3 million capital of Industriebank when the firm bought it was something like 10 millions, was it not? A. It seems to be very high.

Q. When you compute it in terms of the cash 3,850 for it—

11433 Mr. Wilson: Is it 3,850 or 3,580?

Mr. Schwartz: There is a typographical error somewhere, but it was somewhere higher than 3,500 for 1,000 nominal or in terms of 50 per cent paid-in shares.

The Witness: Yes.

By Mr. Schwartz:

Q. Because as I calculate it, the 3,000 Industriebank shares would have meant 30,000 Chemie shares, and half-paid-in would mean 15 million nominal, 7½ million paid in, and if they were indeed sold for 150 per cent, that brings us again to something like 10 million. A. Yes.

Q. Now, what did Industriebank have in its portfolio that called for a price of 10 million? A. I do not know. It must have been rather valuable, but I do not remember.

Q. Well, what did Industriebank have during the five years in which Greutert had it and before it sold it to various individuals? There were five years, '31 to '36, in which the Greutert firm had the original capital that it bought, and an increase of 2 millions. What did Industriebank have? A. I do not recollect. My recollection is that during the whole period Industriebank was very inactive. It may, of course, have been assets, shares, or so in the company. I do not recall specifically.

11434 Q. No doubt there was something to make it worth about 10 million Swiss francs. A. Sure; sure.

Q. Well, what was it that was there to the value of roughly 10 million Swiss francs? What was in the corporation all the five years you held it? What was in the corporation at any time, then or afterwards? Maybe that will help you remember what it had originally. A. I do not recollect.

Q. Well, certainly you were very familiar with Industriebank. You were a shareholder in Industriebank after the Greutert firm— A. I know, of course, exactly what has happened since I became a shareholder, but before I am not sure. Well, I think they had as one asset right from the beginning or from the foundation of I. G. Chemie 100,000 preferred shares.

Q. Of Chemie? A. I think they remained all the time in the portfolio of Industriebank.

Q. Right. They bought those originally, 100,000 of the 400,000 issued. A. Yes.

Q. Those, I think, had a paid-in value of 2 million at that time. A. Yes.

11435 Q. What did they have to account for another 8 million of the purchase price? A. There may have been ordinary I. G. Chemie shares. I do not remember now whether that was the fact or not.

Q. Well, can you remember anything aside from the possibility? The corporation was wholly owned by your firm for five years. You were there from '31 to '36. You became a Prokurist in '34, I think. A. That is correct, but I—the company must have been rather inactive. Otherwise I would better remember it.

Q. What did it do with the 2 million increase of capital that Greutert took up at par in '31? A. Well, I think there must have been transactions which have been carried through, but I do not remember.

Q. No idea what they were? A. No, at least they do not come to my mind. Well then, of course—how was that? That was later. I mean the acquisition of some investment of Visca took place only in '36.

Q. It bought something from Visca in '36. A. In '36, yes.

Q. It bought Visca's roughly half-interest in Greutert. A. Yes, yes.

Q. Did it own parts of Visca? Were its assets pooled with Visca? A. Not to my recollection.

11436 Q. Beg pardon? A. Not to my recollection.

Q. If you can't remember what it had—did you— A. No, I was just asking myself whether the company has had common "B" shares, but that was later on.

Q. That was much later. A. That was in '37.

Q. And when it held such shares, it held them as under option to your firm. A. That is correct.

Q. And it had bought them on credit, did it not? A. Yes, in '37, I believe.

Q. So none of its assets were used for its "B" shares. A. No.

Q. Well, your inability to remember what it had aside from the 2 million value of Chemie preferred makes me suggest to you that it had nothing at all, and that— A. Something must probably have been there.

Q. Well, let me suggest to you that it had nothing at all and this was a way of giving Chemie shares as a present to gentlemen of Farben. A. Well, I don't think so. On the other hand, certainly it was a very good price the I. G. Farben gentlemen got in my impression. That is no doubt the case.

Q. Well, a very good price implies—

11437 A. Well, a very good counter-value.

Q. They got 10 millions, roughly speaking. A. Sure.

Q. In values. And I suggest to you that since you can't remember anything that Industriebank brought, except the 2 million, that they got a bonus of about 8 millions, and this was a way of—what shall we say—watering I. G. Chemie. Do you know the American expression "to water corporate stock"? A. Oh, yes, sure. Well, I cannot make a state-

ment. I am perfectly aware of the fact that the German gentlemen got probably a very high value.

Q. Do you mean they got a lot more than they put in? A. Well——.

Q. A high value implies a relative comparison, does it not? A. Probably, yes.

Q. They probably got a substantial— A. That is my impression, but I cannot make out how much it was.

Q. Do you think they got as much as 8 millions in profit on the deal? A. No, I do not think so, and I cannot compute it, but my impression was they were highly paid.

Q. Now, I think your firm administered the actual exchange that you got.

11438 A. That is correct.

Q. That you got the stock from individuals and you gave them 10 Chemie shares, and so on. A. Well, at least I have seen later on, when this matter was investigated, some Abrechnung, I mean some statements of accounts, how it was carried through with respect to some individuals.

Q. You have seen them, you mean, when the SCO examined your books? A. Yes.

Q. And so they kind of brought them to the surface and you looked at them? A: Yes.

Q. Well, does having looked them over help you to remember now in what proportion these people were paid, how many took cash, how many of them took stock? A. No, that I couldn't say.

Q. The total of Chemie shares that were used for this claim? A. No, that I do not know.

Q. Do you remember who were the individuals? You said they were officers of Farben, but can you give us names of various people who made the exchange? A. Well, if you could read me, as I think in the other case at least I could probably recall some names.

11439 Q. Mind you, this does not purport to be a list of stockholders of Industriebank, but only a list of

stockholders of Visca. A. I see. You haven't got the same for Industriebank?

Q. Not in this document, but would you like to hear the names? A. Well, the names.

Q. Michel, Bosch, Schuon, Bueb, Schmitz, Warmbold, Krell, P. Seidel, O. Seidel, Roesch, Weibel, Gans, Heberlein, and Greutert. A. Well, these are the names you already gave me.

Q. That's right. A. And I think there were others, or at least partly.

Q. Well, do you remember who were among them, some of them? A. Well, I recall all these names as connected with the one or the other sale. I cannot independently recollect now.

Q. Which was which? A. Which was which.

Q. I see. A Mr. von Weinberg, I think, was one of them. A. There is another name, too.

Q. This one? A. I think, or even two Mr. von Weinbergs.

Q. Two von Weinbergs? They were associated with Farben in one way or another?

11440 A. Oh, yes, they were the leading men in the Cassella.

11443 Q. Can you tell us something of this increase of capital, new subscription rights to stockholders of Industriebank, between the time it was organized and the time your firm bought it and what was apparently a very profitable sale of those subscription rights? A. No, do not—I mean I know that a capital increase was carried through, but I do not know the details.

Q. Did you know that in the new subscription that some shareholders got more and some got less than others so that they could have a different degree of profit on the exchange of Industriebank shares and Chemie shares? A. Well, that I cannot recollect. It looks like that according

to the documents. It seems that all the German stockholders made a very profitable business.

Q. Do you remember to whom subscription rights or what kind of persons subscription rights for more Industriebank shares were sold at about that time? Whether there was any selection of people in the sale of subscription rights by whoever was selling? A. You mean the German stockholders?

Q. Yes. A. I do not know. I don't think so.

Q. Were any individuals of Greutert among the stockholders of Industriebank who received an exchange?

11444 A. Not to my recollection. Not as far as I know. No.

Q. Or any individuals then in Chemie? A. No, not to my recollection. I mean my recollection is that the whole capital had been in German hands and that through these transactions they—well, got a very substantial value.

Q. Was Hermann Schmitz a large stockholder in Industriebank at the time of the exchange? A. I believe he was amongst the stockholders too. I don't think he was larger than another one. I'm not even sure if he was. That must be in some—if he was, then you must have a similar document. I'm not sure.

Q. You must have them too I suppose. A. Yes, sure.

Q. Since you exchanged them. A. Sure. I only cannot remember. They were all German gentlemen connected with I. G. Farben no doubt.

11455 Q. Let's put it this way: Did Chemie have anything to do with charging to Sekretariat A the 40 per cent loss on the sale of the Industriebank shares? A. May I please ask the reporter to read the question?

(The reporter read the question.)

Mr. Wilson: If you know.

The Witness: I don't think so. I mean that must have been discussed between Roesch and Greutert and I was not informed.

BY MR. SCHWARTZ:

Q. You don't know whether Chemie even had notice at the time that the Sekretariat was charged? A. I believe—oh, yes. I mean Greutert didn't do such matters without they discussed them with Roesch normally.

Q. Incidentally, if the five million were sold for 60 per cent, it was sold for three million. A. Yes.

Q. But you had paid about ten million for the original three million capital and then you put up two million cash?

A. Well, you mean "you" had paid——

11456 Q. The firm Greutert. The firm Greutert—aren't we right—put up two million cash by the increase of capital from three to five million? A. That would make five for the whole, nominal value of the whole.

Q. They put in two millions cash? A. Yes.

Q. Par. And we have seen that they paid something like ten millions for the initial three millions. A. In exchange to the German stockholders, yes.

Q. So the total cost of the company, of Industriebank, to the firm Greutert was about 12 million? Well, ten and two. A. Yes, if this reckoning is correct.

Q. If ten and two are 12, it was 12. Then it sold this company to these individuals for three million. That is a loss of nine million, book loss, and probably a substantial actual loss of about nine million. Was that the amount of loss that was debited to Sekretariat A? A. No, couldn't have been. I am not acquainted with the fact. My impression is, and I think it coincides with what you came to there, Mr. Schwartz, that the idea when the German gentlemen were sold out was probably to give them quite a substantial bonus in this way, and that may be explained naturally in this way: That that was done in a time, in the

11457 years before where very huge transactions were carried through, through I. G. Farben, for I. G. Farben, gentlemen, people or companies connected with I. G. Farben, and that through such transactions probably

amongst others big profits were made. And in some way, therefore, a very large offer was made to certain leading gentlemen. That is not an independent knowledge but if I look on the whole matter and try to explain it, I put it this way.

Q. It isn't even speculation on the point I am asking about, Mr. Sturzenegger. I was asking about how much of a loss was charged to Sekretariat A in 1936. A. Well, there I think it can only be a small loss, because if there was a loss during the transaction in 1931 that was probably balanced before by huge profits that were made before.

Q. Huge profits in Industriebank? A. No, in the business itself—some other angles.

Q. You mean Greutert made a profit so it was able to take the loss on the purchase of Industriebank? A. Well, that——

Q. But I'm asking whether it was Sekretariat A that was charged with the whole loss. A. Well, I——

Q. It seems, does it not, that 12 million was the cost of the five million Industriebank share capital, yet it
11458 was sold for 60 per cent of par, which is three million. There is a difference of nine million. Now, does that help you to remember how much of a loss was charged to Sekretariat A? A. No, doesn't help.

Mr. Wilson: If your Honor please, he said he didn't remember, and he just gave Mr. Schwartz an answer to the effect that any loss which may have been sustained on the purchase of the Industriebank shares may have been absorbed at that time. So that there was actually——

Mr. Schwartz: It was his speculation, Mr. Wilson, and now you're making it testimony? It was speculation.

The Witness: Yes, of course speculation.

Mr. Wilson: I will let it be what it is. I don't care about that.

The Witness: I tried to explain it.

Mr. Wilson: He's fixing the loss back at the time of the

acquisition of the Industriebank shares and not as of the time of the sale of the shares.

THE WITNESS: Yes, and I do it because I cannot remember at all the Industriebank before—the shares before they were sold to the individual group were carried in the books at some high value. Cannot remember such a thing. Therefore, I don't think there was at that time a substantial loss.

BY MR. SCHWARTZ:

11459 Q. Well, there was then a book loss only of two million, not nine million? A. Well, I do not recollect at the moment. There was a loss. That's correct.

Q. And it was charged to Sekretariat A. A. I do not remember the size of the loss at the moment.

* * * *

11465 Q. You mean that this agreement was substituted? There was something substituted? A. Yes.

Q. You're right. A. It has been completely abandoned and in place some agreement which has the intention to hold a Swiss circle, limited circle of persons together, was then new agreement agreed upon.

* * * *

11466 MR. SCHWARTZ: Will the reporter please mark Document 12424 which was Exhibit No. 30 to the SCO report. I am going to have the reporter mark this, Mr. Sturzenegger, a retyping of the German photostat, because it is not very legible, and also a translation—three documents in all.

(The documents referred to were marked for identification as Defendants' Exhibit 649-12424.)

(The witness examined the documents.)

BY MR. SCHWARTZ:

Q. Will you look at both Germans, the photostat and the retype. A. I have read it, Mr. Schwartz.

Q. Do you recognize that—Incidentally, the letter to
11467 Sutter, you confirm that is a Visca-Sutter letter? I want to be sure. A. I think so.

Q. The one I showed you before. I'm sure it's all right. A. I believe to recollect the text too.

Q. You say you do? A. Yes.

Q. Incidentally, the letter that you got yourself in 1936, did that provide almost identically with Sutter's? A. Yes, to my recollection.

Q. That one had an option during life— A. Yes.

Q. —in Visca that would be withdrawn from you at any time? A. Yes.

Q. Now, this one I take it you signed. A. Yes, sure.

Q. This 12424. I think your name is there. A. Yes.

Q. All of them signed it? A. All of them signed it.

Q. One common agreement? A. Yes.

Q. And this one—I'm right, am I not—provides for
11468 a physical deposit of the shares with the trustee Rigidor whether or not there have been advances and pledges? A. Yes.

Q. And that the shares may not be sold or pledged? A. Yes.

Q. And a death option? A. Yes.

Q. And Rigidor must take the shares at any time on the request of the shareholder? A. Yes.

Q. And they go to the other shareholders on such an occasion and a non-shareholder cannot become a shareholder without a majority vote of the shareholders? A. Yes.

Q. All right. And that was—Incidentally, what happened to the pledges for advances of Industriebank shares when Visca disappeared? You said Rigidor took over at death. Also took over the physical pledge? A. Yes.

Q. So Rigidor has some stock deposited under the agreement as well as pledged for an advance? A. Yes.

Q. Right. A. Still to my recollection.

Q. It has all the stock physically?

11469 A. No, no. Only those stocks pledged. Because this agreement——

Q. Oh, in 1944 the deposit provision was omitted? A. No. In 1944, that's correct. Whereas in——

Q. But from 1940 to 1944 Rigidor had physically all the stock? A. Yes.

Q. And some of it it had as well because of a pledge? A. Yes. Yes. They were deposited—as to whether they were physically deposited with Rigidor I'm not sure.

Q. That was a provision of contract. A. Yes. Well, may be that Rigidor had deposited them for Rigidor's name just with a banking firm, with my firm.

Q. Do you remember that to be the fact? A. I believe so.

Q. Incidentally, all of these shares of these companies, are they all deposited with your firm? A. No. As I recall —for instance, these Industriebank shares as far as they are not pledged are with the respective owners, and it is up to the owner whether he will deposit them here or any other place.

Q. Sure, but anything Perpetua has, whether by way of pledge for advance or by way of deposit, is kept with you? A. That's correct.

Q. Perpetua and Sopadep are with you in your quarters

11470 and so they naturally keep all their assets with you? A. Well, I didn't get the last question.

(The reporter read the question.)

A. No. Sopadep had own quarters.

Q. Elsewhere? A. In Lausanne.

Q. It's Perpetua that's with you? A. Perpetua had, you know, rooms rented in Lucerne. Of course, it has bee liquidated now. It doesn't exist any longer. So I'm not sure about this.

Q. But in so far—I keep getting as confused as anybody—which of these companies are still in existence? A. Rigidor and Industriebank.

Q. Right. A. And Sopadep on a very reduced scale.

Q. Now, Rigidor and Industriebank are quartered with you in your premises? A. No. Rigidor is quartered in Bern with Mr. Cassani.

Q. I see. Does it keep its property on deposit with you—its securities? A. No, I think——

Q. I think you said its Industriebank shares are probably kept with you. A. Well, I meant through this period.

Q. All right.

11471 A. Well, when they had to be deposited according to Clause 1 of the former contract, I'm not sure in my recollection whether now they were physically with Rigidor—that would have been in Bern—or for account of Rigidor with my firm. That was during this second period. Where, after the second contract in 1944, now I'm pretty sure that's different. The shares pledged still for loans are physically deposited with Rigidor to my recollection, whereas the others are deposited individually.

Q. No longer deposited with a trustee? A. No.

Q. But Industriebank is quartered with you and keeps its properties on deposit? A. Since some years. As you remember, the domicile was formerly in Zurich.

Q. Now, Industriebank in the circle has never been an optionholder so it has no occasion to have had deposits of shares. Is that right? A. During what period?

Q. Well, as I understand the whole circle of companies, I don't recall at the moment that Industriebank ever had any options on anybody's stock. A. No, but I only thought for the sake of completeness I would mention that after the Perpetua was liquidated and you know that the Perpetua held options on the Rigidor

11472 shares, these options have been transferred to Industriebank. In so far Industriebank is holder now of options.

Q. On—? A. Rigidor shares.

Q. Which had formerly been held by Perpetua? A. That's correct.

Q. I see. That is Mollwo and who else is an individual stockholder? A. In what company?

Q. No, I'm sorry. That's Cassani, Germann, Auer, Haller and Mollwo. A. That's correct.

Q. So they were transferred to Industriebank? A. Well, there have been made new arrangements with Industriebank, because these options were replaced in some way.

Q. Perpetua was liquidated after the SCO report. Am I right? A. I believe so, yes, because there was still in existence. Yes. And the capital of Sopadep reduced after too.

Q. And these options with Industriebank, are they on Rigidor shares? Are they identical with the options that existed before? Merely transferred to the new holder? Is that the idea?

11473 A. May be. My idea is the same, that the—the leading idea that I think in the case of death the new optionholder, Industriebank, has the right to acquire and must acquire if the heirs, the successors of the deceased, should want it. This is in substance the same.

Q. That is the substance of any death option. But when the option went from Perpetua to Industriebank, was it only a transfer of holder or was there a whole new different kind of agreement? A. It was a different kind I believe.

Q. Different agreement? A. Well, but it's in substance the same. I'm not sure whether this clause about depositing shares has been maintained.

Q. I see. A. That may have been dropped. But the death option is continued.

* * *

11481 Mr. Wilson: Who is this you're talking about?

Mr. Schwartz: Du Bois.

The Witness: May be I mix it up with the Mollwo estate.

By Mr. Schwartz:

Q. Look at the figures on the advances that he was granted in the column under credits. Oh, I'm sorry. I'm sorry. No. I'm looking at the Sutter one below him. It says he paid from his personal funds, so that won't help. But it's your recollection he sold part? You think his estate sold part? A. I think he sold I believe the whole.

Q. Do you know to whom? A. Well, first to Rigidor and then who has acquired?

Q. You mean to Rigidor pursuant— A. Pursuant to the contract right as trustee for the other shareholders.

Q. Right. And who took them over? A. I have in mind that Dr. Schmitt of I. G. Chemie has acquired a certain amount.

Q. I see. Dr. Schmitt is what in I. G. Chemie?

11482 A. Dr. Schmitt is prokurist.

Q. I see. How long has he been with Chemie? A. Two, three years.

* * * *

11489 Q. Yes. Now, Mr. Mollwo, who held nominal 600,000 as of the time of the SCO report, died as we know in about 1948. I don't think I have asked you to whom his holdings were sold, if they were sold. A. My recollection is that the greatest part, nearly all of the shareholding, remained with the estate, and, though I am not entirely sure, I believe a small block was purchased from the estate. They wanted, I believe, to have some liquid cash. And this small block, if I am not very much mistaken, is 50,000 nominal value. So, therefore, if that is right, and I believe it is correct though I am not absolutely certain, the estate must still hold 550.

Q. But to whom was it sold, that small block? A. That was taken over, according to the agreement. That was purchased by Rigidor as trustee.

Q. According to the 1944 agreement? A. Yes.

Q. And sold— A. Sold to Cassani I believe.

Q. I see. I suppose too—Did the purchase price go to liquidate any of the advances which still exist, or were—
A. Well, I'm not sure whether the advances had not been repaid before.

11490 Q. I see. A. I don't think—I think they had been repaid before.

Q. Well, as of 1947 it seems that Mr. Mollwo still was indebted on that stock to about 229,000. A. Yes, I remember that. But my recollection is that at some time after then this was repaid by the estate because they wanted to get rid of the debts, and at some later date then this was purchased against cash to the best of my recollection.

11511 Q. All right. I would like you, please, Mr. Sturzenegger,—Well, you remember we read to you and asked you to confirm a large part of this. The next paragraph in the middle of page 17 is a paragraph which states the option agreements, and I won't bother you to confirm that because it's merely a description of two agreements that we have on the record.

But then at the top of page 18 there are three short paragraphs, the concluding ones on the Industriebank. Would you read those please?

(The section of the report referred to is as follows:)

"As a rule the share holders of the Industrie-Bank represented their shares themselves. It was only when the general meeting did not take place at H. Sturzenegger & Cie's that the Basel shareholders had themselves represented by a single representative.

"In short, it may be said again that for the total fr. 5,000,000.00 shares of the Industrie-Bank A. G. there are still advances in an amount of fr. 937,000.00 altogether for which total nom. fr. 1,245,000.00 shares are pledged as security.

"The assets of the Industrie-Bank for the most part comprise participations in Sturzenegger & Cie. and the 60,000 I. G. Chemie preferred shares. A dividend of 3% is regu-

larly distributed by the Industrie-Bank to the shareholders. Sur-
11512 pluses are carried forward, after the regular allocation to the reserves has been made."

THE WITNESS: I have read it.

BY MR. SCHWARTZ:

Q. Can you confirm these excerpts as you have others?

MR. WILSON: Let me look at it before the question is answered, please.

(Mr. Wilson examined the document.)

MR. WILSON: You may answer the question, Mr. Sturzenegger.

THE WITNESS: I see. Well, I do not recollect exactly how the representation of the shares was handled each year. It was different. I mean normally that is absolutely perfectly correct—that the shareholders have represented their stock themselves. And I remember that sometimes general meetings were held in Zurich when the domicile of the company was still in Zurich or even in other cases were held at Zurich, and then not all, but I think it refers to that, normally not all of the Basle gentlemen involved went to Zurich. May be that, for instance, Werder represented Sutter or vice versa, or Haller myself or vice versa. That may have been the case. But normally the shareholders represented their own shares there.

BY MR. SCHWARTZ:

11513 Q. Well, apparently, then, the general meeting was sometimes at your office? A. Yes.

Q. In Basle? A. Yes.

Q. And when that was so the Basle people attended? A. Yes.

Q. When it was in Zurich they were represented by a single representative? A. No, I don't think a single. May be two or three but not all. But that was different, for

instance. Mr. Germann was much tied up in military service to perhaps what he couldn't attend.

Q. No, but this seems to imply all the Basle shareholders would be represented in Zurich by a single representative. You think that is not so? A. No. Well, may be that once has been the case, but it was not normal practice.

Q. All right. The next paragraph is a matter of arithmetic really, but can you confirm that—since the arithmetic wasn't very explicit—those figures are roughly right? A. I think they were at the time of the investigation.

Q. Of this report? Right. A. My knowledge is that advances, the loans, have

11514 decreased further. They are much lower now.

Q. Yes. All right. And the next paragraph. We know that Industriebank has participations in Sturzenegger. That's right, of course? A. That's right.

Q. And 60,000 Chemie preferred? That's right? A. That was right at the time of the investigation.

Q. Right. Of the report? A. Of the report; yes.

Q. Let's put it that way. A. Report.

Q. Then a dividend of three per cent is regularly distributed. Surpluses are carried forward after the regular allocation to the reserves has been made. The three per cent is right, is it not? A. Was right, and in the last two years I think it was three and a half and respectively four per cent.

Q. But speaking as of this report,— A. Dependent on the result of the business.

Q. Speaking of this report, then it was right, with the amendment you added? A. Then it was right, yes.

Q. All right. Then surpluses are carried forward. Now, I take it that this three per cent refers to the period of the life of the company? At least some distance backwards

11515 from 1947? A. Some long previous period. It was always about, I think.

Q. Would you say since 1936 that three per cent has been declared? A. Since when?

Q. Well, since 1936, when the company was sold to persons other than the Greutert firm? A. Well, there were in these years three per cent, and I think that was already the case before. I'm not sure.

Q. That's right. The reason the price was fixed at 60 percent, you remember,— A. Was based on some small dividend distribution.

Q. So it seemed that three per cent has been the dividend paid by Industriebank almost from the beginning. A. Long period at least.

Q. Then it says surpluses are carried forward. Does that mean that profits are more than three per cent but only three per cent is declared? A. It means the following: That there is one—well, surplus—If you could show me a balance sheet—you haven't got it?—I could explain it. Well, the profit has in some previous years once apparently been more than to allow the distribution only of three or four per cent.

Q. Has been?

11516 A. Has been. Yes. Don't know when. And then instead of transferring this profit to reserve account, which could have been made, it was just carried forward, or a greater part of this, you see, every year. And sometimes I think in viewing one or two years it has decreased because the profits were not perhaps sufficient to allow distribution of such dividend. So then it was just to balance that.

Q. Well, can you say then that customarily the dividend has been three per cent but the profits have been more than three per cent? A. No, couldn't say that.

Q. Or hasn't been the case all the time? A. No. I think it was just once or so, and instead of carrying forward this amount as reserve item it has been——

Q. Carried forward or put in reserve, is it the case that the dividends have been three per cent but the profits have

been more whether the profits were put forward or in reserve? A. I didn't get your last question all right.

Q. I only mean not to differentiate between where the extra profits go. A. Yes.

Q. Reserves or merely being carried forward. A. I see.

Q. But have there been higher profits than the three

11517 per cent however the bookkeeping of those higher profits be? A. Must have been once. I think that lies back.

Q. How often do you think? A. I think only once, because I remember——

Q. This implies, does it not, that surpluses and reserves are customary, because it says a dividend of three per cent is regularly distributed, surpluses are carried forward after regular allocation of reserves has been made. A. No, it's done—well, I couldn't—I could explain it if I had a balance sheet.

Q. I don't mean the bookkeeping. I mean to inquire as to whether profits have been constantly higher than three per cent. A. No.

Q. All right. A. Was about that.

May I ask the reporter to reread the last question about three per cent? I'm not absolutely certain whether I understood the question.

(The reporter read the last three questions and answers of record.)

A. (continued) Then it's all right. I do not exclude the possibility that in some years they were a little higher. We have, as I told you, distributed last year three and a half or four per cent. It's about that. And may be that

11518 once they were even higher. But then depreciations or write-offs had to be carried through and other investments, smaller investments. That must—I mean it's just elastic and it depends on the yearly result.

Q. Those other investments—haven't we shown by your testimony that Industriebank never had anything else but some B shares which it had on option from you and thus no loss, no gain—I mean that wasn't something— A. No, that wasn't something.

Q. Right. And participations in Sturzenegger and the 60,000 Chemie preferred— A. And some I. G. Chemie common shares.

Q. About how much common and when? A. Well, didn't I mention that when this additional lot from German shareholders was acquired by Greutert & Company they were partly resold to Sopadep or Industriebank? My recollection——

Q. An additional lot of Chemie common? A. Yes.

Q. What transaction?

MR. WILSON: The 12,000.

THE WITNESS: The 12,000. I mean a part of that was sold. Then we have seen already the 3,000 in Sopadep. I do not remember whether they are connected with this transaction.

11519 MR. WILSON: I think Mr. Jacoby questioned him.

THE WITNESS: Well, at least I remember that Industriebank has had during the last year, still has, some common shares.

BY MR. SCHWARTZ:

Q. About how many? A. About a few thousand.

Q. A few thousand? A. Yes.

Q. How many? About how many thousand? A. Well, three, four, but I'm not——

Q. Maybe your mention of write-offs or investments can help you refresh your memory as to other assets that Industriebank has held. A. Yes, there is more holding, and I was just thinking of that because it needed some write-offs, some shares of Banque Federale.

Q. Banque Federale? A. Yes.

Q. Does that have another name as well? A. No, the

German name is Eidgenoessische Bank. There had been a parcel a long time, and the business of this bank didn't go well during a long time, had reduced the capital, and then it has been merged into the Bankgesellschaft.

MR. WILSON: Union Bank.

11520 THE WITNESS: Union Bank.

BY MR. SCHWARTZ:

Q. Is that the one that was liquidated after the war with Germany was ended? A. No.

Q. When was it liquidated or merged? A. Well, there were two that had been liquidated. One was the Baseler Handelsbank—or at least the greater part of the assets was taken over by the Swiss Bank Corporation. And the other in a bad state was Eidgenoessische Bank where similar arrangements had been made with Union Bank. I do not remember the exact date.

Q. About what year? A. About the end of the war.

Q. Isn't that the one that is supposed to have gone bankrupt because of its large loans to Germany? A. Well, that may have played a great part—and in France. Both institutions had, as all Swiss banks, great investments in Germany.

Q. How much of Eidgenoessische Bank did Industriebank own? A. I believe 500.

Q. 500 shares? A. Yes.

Q. What is that in terms of the whole ownership of

11521 Eidgenoessische Bank? Only a very small amount?

A. Oh, yes, very small.

Q. Minute? A. Minute. Just nothing.

Q. Any other assets that you can remember Industriebank having? Incidentally, is Eidgenoessische Bank the bank that Mr. Wolfensperger is very active in? A. Yes, correct.

Q. He is what? Manager of that? A. General manager.

Q. General manager of that bank? And the connection between Industriebank and its purchase of Eidenoessische

shares was very possibly Mr. Wolfensperger's connection with both? A. Well, he may have in his judgment thought it was a good investment and it turned out badly.

Q. Incidentally, it is Wolfensperger who is head of Industriebank? A. Yes.

Q. President? A. Yes.

Q. And Eidenoessische Bank was located in Zurich? Am I right? A. In Zurich. Well, they had offices in other cities too.

11522 Q. Main office in Zurich? A. Main office.

Q. The main office of Industriebank was Zurich? A. No longer. Was Zurich.

Q. Was at that time? A. Yes.

Q. Until Eidenoessische was liquidated? A. No, has nothing to do with that. I think there were especially tax reasons why it was——

Q. It was located with Mr. Wolfensperger? A. No, it was with Eidenoessische, if I'm correct, but I'm not sure whether its domicile was transferred already to Basle before.

Q. I see. But when it was in Zurich it was in Wolfensperger's premises? A. No, it was at Eidgenoessische Bank.

Q. At the Eidgenoessische Bank? A. At the Eidgenoessische Bank.

Q. Well, did Industriebank do transactions for Eidgenoessische Bank, financing, loans, credits? A. There may have been smaller which I do not recollect. I don't think much.

Q. Any other assets now that—going beyond this point, any other assets than this Eidgenoessische block? A. There may have been temporarily. I do not

11523 recollect. And to my knowledge there are no others there, or only—if—they are only very, very small part, Swiss.

Q. Since Industriebank was quartered with you, it was

quartered with you since before 1947 I gather? A. I believe so.

Q. Then I suppose it is correct to think that its files with you were among those inspected by the SCO in the course of its investigation? A. Well, they were—I remember that the files were inspected. Don't know whether at Zurich or Basle. They were inspected.

Q. Wasn't it in your quarters from before the inspection, before the investigation? A. Well, partly and partly not.

* * * *

11525 Q. And this one, too, as in the case of Mr. Mollwo's affidavit, said merely that every stockholder was free to vote his shares and omitted mention of the pool agreement. You notice that? A. Well, I don't know whether—here the pool agreement is mentioned in this affidavit—and free to vote. They were of course all free to vote.

* * * *

11612 By Mr. Jacoby: . . .

Q. Now, I would like to turn to another block of shares, namely the block of 500,000 "B" shares, which is the second column in Mr. Wilson's chart. I think Mr. Wilson has mentioned before that this block of shares was always registered in the name of Banque Federale; is that right? A. Yes.

11613 Mr. Wilson: That's right.

The Master: Which transaction do you refer to, Mr. Jacoby?

Mr. Wilson: The second column.

The Master: But the top or——

Mr. Jacoby: The second column, and I would like to take the transaction which is dated the 30th of December 1937, and therefore the reference is to Mr. Wilson's Supplement 8B (Exhibit 662-24999).

The Witness: 8B?

Mr. Jacoby: That's right.

BY MR. JACOBY:

Q. Now, my question is, as a general question, and I wonder if you can help us on that: Those shares were registered in the name of Banque Federale? A. Yes.

Q. The transaction of December 1937 was described again as the institution of a nomineeship of Industriebank. Now, perhaps you can explain to us what the addition of a second nomineeship could have been from an economic point of view. A. I mean, I would like to say the nomineeship, as you call it, in the name of Banque Federale, was, I think, even in European conception a pure nomineeship in so far as to my recollection no financial transaction, no sale or so, was involved. The shares were apparently just registered in the name of Banque Federale. And now, it was just an internal

11614 business consideration of the firm Greutert & Company which, as I told you, administered these "B" shares in the ultimate interest of I. G. Chemie, whether the firm Greutert should hold them in the own portfolio or transfer them by a sales transaction to another company, as in this respect apparently has been done. They have been sold to Industriebank under option to buy them back. And they have been bought back in accordance with this option, and have ultimately been transferred and sold to I. G. Chemie. And if I am not mistaken, during the whole period the shares were formally registered in the name of Banque Federale as nominee.

* * *

11625 Q. Now, one last question on this block of the 500,000 "B" shares. The Master just called attention to the two transfers which are alleged to have taken place on the 29th of Novemer 1941, one from the Industriebank, Zurich to Sturzenegger, and the second from Sturzenegger to Chemie. A. Yes.

Q. Now, if you will look at the exhibits submitted with these two transactions, namely Exhibits 8A and 8— A. Yes.

Q. Supplement 8A (Exhibit 662-24999) consists of Annex 1, 2, 3, and 4, and Supplement 8 (Exhibits 662-24999) consists of Annex 1 and 2. Now, in this transaction you will please compare the payments made, and in this transaction Industriebank took a loss of about 400,000 dollars, did it not?

11626 A. No, it didn't take a loss. Well, do you want me to explain the transaction?

Q. Well, let's go through it. Well, why don't you explain it first. A. Well, my recollection is that when the "B" stock involved, these 500,000 "B" shares, were sold to Industriebank, and we have seen that that occurred, I think, in '37 if I am not mistaken, then they were sold at the price of, I think, one dollar or gold dollar—I am not sure, one of both; it must be seen from the documents.

Q. One dollar? A. And the option agreement was that Greutert & Company could buy them back at the same price. And in this case, during the time of the possession of Industriebank, Industriebank had a financial interest because there was a difference in rates, and I remember they had considerable financial interest in it.

Then, at some later time—I do not recall now the exact date—it was agreed between Greutert & Company and Industriebank that Greutert, in order to reduce the rather large indebtedness of Industriebank, would transfer to Industriebank or pay to Industriebank an amount of, I believe to recollect, about 2 million Swiss francs, which was to be applied for a corresponding reduction of the book value of those shares in the books of Industriebank.

11627 And at the same time it was agreed upon between the two firms that the option previously mentioned of the firm Greutert & Company could from now on in the future be exercised not at the previous sales price, but at the reduced basis, and so it was done. When the option was exercised, Greutert & Company bought back these shares at the reduced book value agreed upon. So there was no loss in this transaction.

Q. I don't quite—I'll see whether I understand that.

The transfer to Industriebank— A. I mean Industriebank hasn't suffered any loss in this transaction because——

Q. But the earlier transaction at the rate of one dollar— A. Sure.

Q. And the later transaction at the rate of one franc— A. Yes, and now the difference was paid before to Industriebank, but the supplemental payment I mentioned in the meantime——

Q. But it was paid at a time when Industriebank was, and remained, the owner of the shares; was it not? A. Sure, but with the understanding and arrangement which was expressed in correspondence, and which I recollect very clearly, that this sum transferred to Industriebank in the meantime should be used for writing down these specific assets by this amount transferred to Industriebank.

11628 Q. What was the reason for making a payment to Industriebank at the time when Industriebank was still holding the shares? A. Well, just for reducing the indebtedness. I think it was a wish expressed by Mr. Wolfensperger. He didn't like the picture of Industriebank being so much indebted, and the final financial result was about the same. I mean, Industriebank hasn't suffered anything. Industriebank had acquired this lot for one million—no, it was $500,000. It makes about—what was it—about 2½ million Swiss francs. And now——

Mr. Wilson: It is tantamount to adjusting Industriebank's original purchase price. That is what it amounts to.

The Witness: Sure. That went down from 2½ million to ½ million.

By Mr. Jacoby:

Q. But you made that payment at the time when Industriebank claimed to be the owner? A. Of course; sure.

Q. So there was a time when Industriebank had the shares which were carried on the books at $1.00 apiece, and got the additional payments from Sturzenegger. A. Well,

on the other hand, Industriebank was now, from then on, under obligation, if the option should be exercised.

Q. When was that payment made, do you recall, that earlier payment?

11629 A. 1938 or '39, I do not know.

Q. For three years you mean Industriebank had the benefit of— A. What benefit?

Q. Of $400,000? A. No, not at all.

Q. Because it had the stock as well as the additional payment.

MR. WILSON: They adjusted it on the basis that Industriebank paid too much in the first place; isn't that it, Mr. Sturzenegger?

THE WITNESS: Sure, and the option agreement was changed in so much that from the moment of the payment on, Industriebank was under obligation to re-transfer, to re-sell the shares, if Greutert and Company wished so, to the reduced price.

BY MR. JACOBY:

Q. If Industriebank was under obligation all the time, why was the payment made? A. Just to reduce this indebtedness which I think Mr. Wolfensperger, as president of the Industriebank, didn't like.

Q. You mean Greutert, the firm Sturzenegger at that time, helped out Industriebank in showing a better balance sheet; is that it?

MR. WILSON: What?

BY MR. JACOBY:

11630 Q. Helped out Industriebank to show a better balance sheet? A. Well, financially it came finally to the same result, so there was no reason to not do it this way. I mean, we had sold these shares to the price of $1.00. We could have done it—nobody could have hindered it—to one-quarter dollar.

MR. WILSON: Or one franc originally.

THE WITNESS: Then you would have the same picture from the beginning.

BY MR. JACOBY:

Q. But, Mr. Sturzenegger, this is the only transaction in all the matters you submitted which isn't a transaction at a price of $1.00. All the others are $1.00, or sometimes called a gold dollar. Now, here all at once, you have a transaction called one franc. A. Well, there are sometimes exceptions to rules.

MR. WILSON: And, Mr. Jacoby, if the Industriebank holding was a kind of nomineeship, what difference does it make?

MR. JACOBY: Well, it would make a big difference in the balance sheet of Industriebank.

MR. WILSON: Make a difference to whom?

THE WITNESS: But the financial result was the same. You are aware of the fact, Mr. Jacoby, that also, of course, Industriebank was under a similar clause that dividends had to

11631 be transferred in so far they were above a certain level, and so a material interest was from the beginning cut off. Well, if you wish, I am going to try and explain it again, but finally it came to the same result.

BY MR. JACOBY:

Q. No, that isn't necessary. A. And that is a fact, Industriebank didn't suffer any loss in this transaction.

* * *

11646 MR. JACOBY: I ask the reporter to mark 13910, which is an affidavit of I. G. Chemie, dated August 27, 1940.

(The document referred to was marked for identification as Defendants' Exhibit No. 676-13910.)

(The witness examined the document.)

THE WITNESS: I have read it, Mr. Jacoby.

By Mr. Jacoby:

Q. Now, you will note that that affidavit, which is Exhibit No. 676, is signed by Mr. Iselin, is it not? A. Iselin and Haller.

Q. Iselin and Haller. You will note that that talks about 300,000 "B" shares. A. Yes.

Q. Taken over in September '39 from Voorindu—A. Yes.

Q. —and then transferred— A. No. You mentioned 600,000?

Q. No, 300,000. I am talking about the second— A. I see.

Q. —block mentioned in there, 300,000.

11647 A. I see, yes.

Q. That they were taken over by Greutert in September 1939 from Voorindu. A. Yes.

Q. And that ultimately, on April 30, 1940, this block was acquired by Interhandel. A. Yes.

Q. Now, if you will take a look at the "B" shares chart submitted with your claim, if you will take a look at the way the chart is made up with your claim, you will see that the 300,000 "B" shares which you now claim, according to the chart never went to Voorindu. If you will again run down the column, it is from Greutert to Mithras, to Greufert, to Mithras, to Sturzenegger, to Interhandel. A. Well then, there must be some error in the chart, because the fact is absolutely clear to me, and I remember it very well, that that affidavit is in accordance with the fact.

Q. So, of course, being unable to explain all the details, you think that the condition as it was described in the affidavit is the correct one? A. Yes.

Q. So that, may I suggest now, instead of those 300,000 shares going back to Mithras and from there to Sturzenegger, they went from Greutert to Voorindu and from Voorindu to Greutert, and then back to Interhandel.

11648 A. No. The first statement you made is in accordance with my recollection. They went from Greu-

tert to Voorindu. Then in '39 they were, according to the existing option, reacquired by Greutert.

Q. That is what I meant. A. And then they didn't remain, according to my recollection, in the meantime with Greutert, but if my recollection is correct—I am not absolutely certain as to these details—they went then in the meantime to Mithras.

Q. Do you mean between September '39 and 1940? A. Yes, and remained there until April 30, until they were acquired finally by I. G. Chemie. That is my recollection.

Q. Well, whatever happened between September '39 and 1940, you are now inclined to feel that the chart as submitted by Mr. Wilson isn't fully accurate in that it omits the transfer to Voorindu and the reacquisition from Voorindu in September '39? A. There may be, as I look now upon it, and I think I can clear it up entirely when I am back in Basle, some error as to the denomination of the certificates themselves. As to the parcels and so and so many "B" stock, it is in my recollection entirely clear, I believe, how the matter was made.

Q. Well, I think— A. Only that one certificate may have been taken for the other one. Maybe that can explain it; Mr. Wilson.

11649 Mr. Wilson: Let's clear that up right now. In your chart 664, Mr. Jacoby, this one that Mrs. Hoffman made, in the column under Voorindu—do you have yours before you, your Honor? I would like you to see this.

The Master: I haven't got the little one. It was here the other day.

Mr. Jacoby: Here is a copy.

Mr. Wilson: You will notice the author of this chart has in parentheses "Certificate No. 30," and then has open "Certificate No. 31," and then, in another column, on another line, and from then on to the end, "Certificates No. 32 to 34."

MR. JACOBY: That is correct.

MR. WILSON: Now, my recollection is that Certificates No. 32 to 34 are respectively for 100,000 shares each.

MR. JACOBY: That is correct.

MR. WILSON: Let me finish my statement. According to my information, Certificate No. 30 was issued in the name of Voorindu on September 7, 1937, one certificate for 300,000 shares. That certificate was cancelled two days later, on September 9, 1937, and a new certificate, No. 31, again for 300,000 shares, was issued. Five days later, September 14, 1937, that certificate was cancelled, and on September 14 certificates 32, 33, and 34 were issued for 100,000 each, which appear, according to your chart, to have been the subject of the vesting.

11650 MR. JACOBY: That is correct.

MR. WILSON: Now, I haven't looked at the certificates. I mean I don't have the GAF certificates. But is it possible that there were two certificates outstanding simultaneously for 300,000?

MR. JACOBY: No, Mr. Wilson, the explanation is very simple. No. 30 was replaced by No. 31 for the very simple reason that the name of the Dutch company had been misspelled.

MR. WILSON: Yes.

MR. JACOBY: So almost immediately when that error was noted, another certificate was issued which became No. 31.

MR. WILSON: Yes.

MR. JACOBY: That 300,000 share certificate was broken up into three 100,000 certificates each on the 14th of September. So there is no change in substance from the earlier period, and no change even in form since September 14, 1937.

MR. WILSON: Now, do you agree with me, Mr. Jacoby, that Certificate No. 30 to Voorindu, improperly described —that that came out of the Mithras block?

MR. JACOBY: I think that's right.

MR. WILSON: Yes.

MR. JACOBY: You see, Mr. Wilson, I don't know whether we will get anywhere by it. Mr. Sturzenegger has suggested he can clear it up in Basle. I only want to state for the record that in describing the chain you didn't set it forth correctly,

11651 and that the earlier statements by Chemie would indicate a different chain, with the result, of course, that your statements attached to the supplements in various places, that a certain part of the shares isn't really involved here, are not accurate because all the transfers of 950,000 shares from Voorindu would become important if the shares, rather than remaining with Mithras and going back between Mithras and Greutert, went to Voorindu and came back in September 1939 from Voorindu. It is a very technical point.

MR. WILSON: We have been made aware over the weekend of this aparent——

MR. JACOBY: Inconsistency.

MR. WILSON: —inconsistency. But in your questions right now—and this is the thing that stands out in my mind—if you will look to Annexes 1 and 2 to Supplement 10B (Exhibit 662-24999), you will find that at the end of the year '37 there was a sale back to Mithras of 300,000 shares.

MR. JACOBY: Those are, as I gather it, a different group of 300,000 shares. Well, I mean I don't think we get anywhere.

MR. WILSON: No, you do get somewhere because you may help me with it. You have got the certificates.

MR. JACOBY: But you looked at all the certificates, and if you do desire, if you didn't photostat them at the time —I don't know if you did—we will be very happy to make them available to you again.

11652 MR. WILSON: No, what I have here, the data I have before me, is data I got from General Aniline or which was gotten from General Aniline before the

war. For example, I have got a date here, "Oustanding Certificates, October 25, 1941"——

MR. JACOBY: Why don't we do it this way. You may not have photostated all our certificates at the time because you didn't consider it necessary. I hereby undertake to give them to you for photostating again, and that might be able to clear up the matter. I just wanted to state how, after thorough examination of your previous claims and of the certificate chart, the situation looks to us.

MR. WILSON: I appreciate that and I appreciate your offer which I will avail myself of. Let me just ask one more question and then you are free to go ahead. Can you tell me in a word what you identify as the 300,000 shares involved in the December 31, '37 sale to Mithras?

MR. JACOBY: I am not quite positive.

MR. WILSON: I mean I would like to have the benefit of your theory on it because you may be right about it.

MR. JACOBY: I think the SCO chart would indicate that that is a block of 300,000 shares which finally ended up in Sopadep. You see, our explanation is that this block, your 10B—is that right?

THE WITNESS: Yes.

MR. JACOBY: That this is a block which went—this

11653 950,000 was already cancelled.

MR. WILSON: I am glad to have your suggestion and I am not at all in a position to say that there isn't a basis for it. The trouble with me is that in this information that I got from General Aniline before the war, Mr. Jacoby, the 950,000 block was registered in Sopadep's name by Certificate No. 35 on December 7, '39.

MR. JACOBY: That's right.

MR. WILSON: And the source of that block, according to this memorandum which was given to me, were the 950,000 shares registered in Japhet's name.

MR. JACOBY: That is correct.

MR. WILSON: By Certificates 21 through 29.

MR. JACOBY: That is correct.

Mr. Wilson: And therefore I had the impression that whole 950,000 went in one lump, you might say, to Sopadep.

Mr. Jacoby: Yes, but that was later. Well, anyhow, I don't think we can gain much——

Mr. Wilson: All right, we'll clear that up. We will either agree that you are right or we will educate you or you educate us about it.

Mr. Jacoby: I gave you all the evidence on which we base our stand.

The Witness: I would like to give an explanation, but it is perhaps better I clear it entirely up instead of making an

11654 unsecure statement. My impression is that the affidavits are, and figure-wise everything is absolutely correct, but there may have occurred an error as to the number of the certificates in the chart.

Mr. Jacoby: And you realize that the Voorindu 950,000 shares would all be involved in this claim, that therefore these little annotations you submitted with your supplements aren't entirely accurate.

Mr. Wilson: I realize there is only one block of 300,000 shares that we ultimately claim.

Mr. Jacoby: Yes.

Mr. Wilson: And that that had a route somehow through Voorindu sometime. There is no question about it.

* * *

11659 The Master: Will you read the last statements on the record, please.

(The colloquy referred to was read by the reporter as follows:)

"Mr. Jacoby: Well, maybe it would help our understanding if you would look at your chart—for example, the third column has a pedigree which goes 1929, 1930, 1935, and then jumps to 1939. Others, I notice, jump from 1929 to

1937. Now, it would be good in order to establish a chain of title, as to in what columns you omitted intermediate steps and in what columns you were complete, because I think that would help the chain of title. I think if we leave that suggestion on the record, your Honor——

"Mr. Wilson: Maybe we can clear it up for you.

"Mr. Jacoby: Your Honor, do you suggest that I take any other step in this connection?"

The Master: Mr. Wilson, did you wish to make a statement?

Mr. Wilson: I have no hesitancy in preparing a more elaborate chart which will show the complete pedigree from the beginning, and while that will take some time and effort to do so, I will commit myself to the requirement to do that as soon as I can.

Mr. Jacoby: Do you think you will be able to do it before the cross-examination, Mr. Wilson?

11660 Mr. Wilson: Do you think that you might assemble other data while you are there?

The Witness: I think I can do it, but first, of course, I must be back; otherwise it would be too uncertain. And it should really be accurate and certain.

Mr. Wilson: Let's try to do this: Maybe we won't have any formal chart ready, but if we can prepare a memorandum which will show the sequence of those ownerships in the interim, we will do our best to do that, Mr. Jacoby.

Mr. Jacoby: Your Honor, these shares, of course, are the shares at issue in this case, so I think it would be helpful if Mr. Sturzenegger could be examined on the chain of title if necessary. Therefore, I think it would be very helpful if Mr. Wilson would undertake that he would complete the chain, if possible, by the middle of May.

Mr. Wilson: Yes; we will bend every effort to do that, Mr. Jacoby.

11820 BY MR. SCHWARTZ:

Q. Now, Mr. Sturzenegger, can you tell us what was the firm of H. Ahrens & Co., Tokyo? A. No, I cannot. I mean I can give my general impression as I always had this impression.

Q. Naturally. A. That it was an old business connection which existed already before I had to occupy myself with such matters, and from the transfers back and forth, all what happened during this long period of time, I came to the conclusion it is probably a firm that had as well export-import and financial business, and was in some way —had an extensive business, no doubt, with I. G. Farben.

I believe that one partner, maybe the leading partner, was a Mr. Bosch. I believe that he was a relative, maybe even a brother, of the well known I. G. Farben Bosch.

Now, what the firm did all in detail, apart from this export-import business, and what else may have been connected with that, I do not know. I remember there were many remittances; there were also remittances from I. G. Farben to this firm. So there must have been a very good and intensive business connection between those two firms. I remember, too, that remittances were made, I think, by order of typical sales companies

11821 of I. G. Farben in the Far East as Bayer Remedies or Agfa, I don't know, but firms with these well-known names.

Q. You mean remittances through Ahrens? A. Yes, I believe so.

Q. To Farben? A. Yes.

Q. Through you? A. Yes. Oh, through my firm, but in so far I am acquainted with it, they mostly came in via other Swiss banks, Kreditanstalt, Bankgesellschaft. Well, that was different always. I think most came in through such a Swiss bank.

Q. These remittances you speak of—what period of time did they occur in? Before the war and during the war?

A. Yes; before and during the war. At least, I mean my recollection is that in the early period of the war there were many remittances and then later on that dropped, I think from '42 on or so.

Q. So when the volume of remittances dropped, these dropped as well? A. Pardon me?

Q. You mean the general volume of remittances to Farben dropped as the war went on, and these dropped correspondingly? A. Well, correspondingly.

Q. Or they dropped too? A. I think the whole account was no longer so lively,

11822 as I recollect it.

Q. You say export-import business. Export-import of what, Mr. Sturzenegger? A. It may have been anything. I am, as I told you, not acquainted with the business, but I have seen remittances when I went through those documents. Maybe I remembered one or the other independently, remittances which seemed to refer to nitrogen, for instance.

Q. What other kind of export-import business did Ahrens do? A. Well, that I do not know.

Q. You can't think of one other commodity that they exported or imported to your knowledge? A. No. I have seen amongst those documents of which some photostatic copies were shown to us a metal account, but it struck me as new. I don't think that I have seen such an account or items reflecting such an account with my firm. It only struck me because I thought——

Q. So you have no knowledge of export or import of metals, any kind of metals, precious or non-precious? A. No. On the other hand, I remembered as you mentioned that, that amongst those remittances there were, if I am not wrong, remittances, too, occasionally, which seemed to refer to the Deutsche Gold-und-Silberscheideanstalt, which of course is a firm in the precious metal branch.

11830 By Mr. Schwartz:

Q. . . . And Mr. Hermann Schreck—was he a customer of yours during the war or after? A. Not to my recollection.

Q. Personal account? A. May have had once, but I do not recollect that. I don't think—if he has one, not for a long time, whereas for Bosch I recollect quite clearly that he had, during a long period, always a personal account.

* * *

11852 Q. Mr. Sturzenegger, can you tell us how you corresponded by mail with Ahrens in Tokyo? A. Well,——

Q. I mean the method, the route. You didn't just drop a letter in the corner post, did you? A. Yes, sure. I mean for a certain time. Then there were instructions I believe to send the mail via Siberia at one time.

Q. Yes. Well, I notice, however, that you almost invariably sent duplicate letters, each signed, and in many cases both the original and the duplicate are received in Tokyo, and in some cases only the original is, and in some only the duplicate. A. I see.

11853 Q. And they are received at very different dates, sometimes as much as months apart. So that it occurs to me that you sent one letter via one route and one letter via another route: A. Well, that may be. I mean if we had such instructions from a certain time. And then that may well have been the case.

Q. Well, do you remember what the instructions were and what the route was and how you sent them? A. I remember that letters were sent via the land way. That means way of Siberia. Probably because the other way was cut off by the English.

Q. By the land way you mean that when you mail a letter you say "Via"— A. I believe so.

Q. —"Russia, Siberia," and the post office sends it that way? A. I believe so, yes.

Q. But did you send them both ways or two ways? A. That I'm not certain about it.

Q. Do you remember what the instructions were? A. That from a certain moment on, which I do not recollect, letters had to be sent via Siberia I think.

Q. Do you remember what point of time that was? A. Do not remember it, but it would be reasonable,
11854 after the sea route was more and more closed probably.

Q. You mean after the Americans entered the war? A. I think even before.

Q. Even before the Pacific was cut off by the British? A. I think so.

Q. And the Atlantic was too? A. Yes.

Q. But what two routes did you use? Because we have seen instance after instance of both the original and the duplicate arriving at a very different time. A. Well, that I do not recollect. It might have been that the one letter was just in the envelope marked "Via Siberia," the other probably not, which went directly.

Q. How was that other marked? A. I do not recollect that. And as long as the letters could send the sea route, I think there was no special remark probably on it. I do not recollect that.

Q. Yes. Well, as late as February 1944 both original and duplicate were being received. For instance, letters that you sent in February, March, six letters, being numbers 408 to 414, one set, the originals, were received in September of that year, which is seven or eight months; another received in August of that year,— A. I see.

Q. —which is a month earlier. Well, perhaps only
11855 two weeks earlier. So they both went and they both got through. A. And can it be stated from some documents, envelopes or so, which way both——

Q. No, I'd like you to tell us that. A. Well, cannot. Is it not possible that as well the original as the duplicate were sent land way, Siberia, one after the other?

Q. Anthing at all is possible except these are stamped received by Ahrens two weeks apart. A. Well, that——

Q. The duplicates are all received August 24th and the originals are all received September 8th. A. Well, if the difference of time is no more than that, it could well be the case that instruction was——

Q. Well, I don't want your guesses, Mr. Sturzenegger. I would like you to tell us, if you know, how you sent the originals and the duplicates. A. Well, by normally posting them both.

Q. And as to the route? What other route other than Siberia did you use, say in 1944, if you used another? A. I think it can only have been the Siberian route, because I don't think that the other route was practicable.

Q. You used no couriers, no pouches, no other means than the post office?

11856 A. No, not to my recollection. Well, if—We had, I remember, the following: That once we got—maybe several times—the instruction from Ahrens that letters which had come addressed to them mailed to us, or our own accounts, or whatever it was, correspondence, should be kept. And then I remember that one occasion, or maybe several occasions, we got instructions then to send, after it had been collected together. May be that once somebody empowered to take this post passed by.

Q. Passed by? A. Yes. May be. I do not recollect that. That Mr. Bosch or another man once traveled through Europe. I only recollect that we had once instruction to hold post back for a certain time I think.

Q. Well, that was not your own correspondence to Ahrens? A. I think it was both.

Q. Well,— A. It was correspondence.

Q. Well, let's take it step by step. You had instructions to hold certain letters that came to you for Ahrens? A. Yes, that I remember.

Q. Not your own letters? Obviously letters that came from outside? A. Yes.

11857 Q. And you gave these to somebody who passed by to take them to Ahrens? A. That I do not know. I only know that we kept them and then probably according to the instructions it was done.

Q. Well, what did you do with them? Those you did not drop in the corner mailbox? A. That I do not know. May be that once post arriving in Basle was kept there until they asked to send it or until they asked to hold it until somebody should pass.

Q. May be? A. Yes.

Q. May be they told you to throw it away, but that doesn't help us a bit. A. I don't think so.

Q. What did they tell you to do and what did you do? A. Just were held once, post.

Q. To hold it? A. Yes.

Q. Not forever? A. No.

Q. You don't have it now? A. No, certainly not.

Q. What did you do with it? A. Well, I think it has been handled then according to what I have said.

11858 Q. Well, what did you do with it? A. Well, if somebody——

Q. Please, Mr. Sturzenegger, no "if's." What did you do with it? Do you know or don't you know or won't you tell? A. No, I'm perfectly prepared and willing as always to tell you what I know, but only my recollection of these matters is not exact at all. Therefore, I wouldn't like to make statements which afterwards are not accurate.

Q. Well, can you make any statement at all to what you did with this mail? A. Yes, that certain mail was withhold there.

Q. Yes. A. That I remember.

Q. Yes. A. Because according to the instructions were so.

Q. What did you do with it? Can you make any statement on that? A. Well, it was afterwards I think that there were occasions where they were sent normally posted and other occasions where somebody passed to take them.

Q. And you gave it to them? A. Yes.

Q. To take to Ahrens? A. Yes.

11859 Q. Who was that somebody? A. That I do not know.

Q. An agent of Ahrens obviously, because he was going to give it to Ahrens. A. Well, if Ahrens had—I do not recollect one such particular instance and do not recollect having seen a man or so, but he can have empowered once somebody or tell, "Hand it to this or this gentleman."

Q. They empowered somebody to stop by and pick up the mail that you had for them? A. That's just how it may have happened, and I think so.

Q. I wish you wouldn't tell me "may." Is that the way it did happen? A. I think that it happened once so. May be on several occasions.

Q. All right. On how many occasions did it happen? A. That I cannot recollect, because I do not recollect the instances.

Q. One? Less than five? More than five? Less than ten? More than ten? A. All would be speculation.

Q. You have no idea whether it was one or fifty? A. No, I have not. I think may be several, but not very often, because the post was held.

Q. How many letters were involved? A bagfull or a hand-

11860 full or ten or fifteen or twenty? A. That I cannot tell neither.

Q. Well, did this man come up with a truck and take them away? A. No, can only have been a few letters.

Q. It was only a few letters? A. To my recollection. I haven't counted them.

Q. You wouldn't deny that it was more than ten or less than ten? You don't know? A. Of course not.

Q. You only know there were several? A. Yes.

Q. From where did these letters come? A. They were letters—I saw that from the documents—I think beginning of the war from English firms.

Q. And where else? A. May be Farben letters. Cannot——

MR. WILSON: Farben what?

THE WITNESS: Farben letters.

BY MR. SCHWARTZ:

Q. May be or may be not. Were there any Farben letters? A. Cannot recollect that. I really cannot exclude that.

Q. You couldn't deny there were Farben letters?

11861 A. No, couldn't deny it.

Q. Letters from whom else? A. Couldn't tell.

Q. Who else? You have no idea? A. No.

Q. Hmmm? A. I mean there could be, "Thanks for the Liebesgabenpakete," for instance.

Q. They could be? A. Yes.

Q. They could be pictures from an exhibition, Mr. Sturzenegger. We're not interested in what they could be. Did you open them? A. No.

Q. Then you don't know what they were? A. No, do not.

Q. All right. Who else's letters were there? A. I simply cannot recollect.

Q. Any letters from Stockholm? A. Can be the case. I cannot recollect that.

Q. Any letters from Switzerland? A. Not to my recollection.

Q. Any letters from Zurich in Switzerland? A. Well, I again want to repeat—I mean I cannot recollect the name of firms. I remember there were letters.

11862 And we had instruction to keep them.

Q. You just recollected English letters and Farben letters? A. Yes.

Q. And you can't recollect Stockholm and Zurich? Am I right? A. No, I can't recollect. I do not exclude them.

Q. Yes. Any other letters? A. Cannot recollect.

Q. I see. Now, this person who came by to take them,

do you remember whether it was the same person each time? A. No, I haven't seen him.

Q. Who saw him in your firm? A. Well, I think Werder.

Q. Who kept these letters for Ahrens while they were being held, as you said, physically in your firm? A. You mean the gentleman?

Q. In your firm, who held on to them? A. Well, I think that Werder or Mr. Dora.

Q. Who? How do you spell that? A. Dora. D-o-r-a.

Q. Mr. Dora? A. Yes. Mr. Maritz maybe too.

Q. What was Mr. Dora? A. He's just a younger clerk who——

11863 Q. A junior? A. Junior clerk, yes.

Q. You never saw these letters? A. Cannot recollect.

Q. You wouldn't deny that you saw the letters? A. No, cannot deny. I simply do not recollect.

Q. You never heard anything in your firm of who it was who came by to pick them up? A. If I have been told I cannot recollect the name, the occasion.

Q. I see. Did you know what this person's other capacities were? A. No.

Q. Aside from his coming by to pick up the letters? A. No.

Q. Did you know how he was going to deliver them to Japan? A. No.

Q. You passed letters from Auer to Farben and back. We have been over that. A. We have been over that. We have——

Q. Yes. And you passed these letters from someone to someone for Ahrens. I'm just summing them up for a moment. Whose else's letters did you pass during the war?

A. I do not recollect.

11864 Q. Will you deny that there were others? A. No, do not deny it.

Q. I see.

THE MASTER: Would you get a date, Mr. Schwartz, from him on the "A" letters?

MR. SCHWARTZ: The Ahrens letters? Yes.

BY MR. SCHWARTZ:

Q. What period of time did this withholding of letters cover, Mr. Sturzenegger? A. Well, I think about the beginning of the war.

Q. Until when? A. About middle of the war, to my estimate.

Q. What is the middle by your estimate? A. Well, 1942 or 1943. That's my somewhat vague recollection. I'm not accurate about the dates.

Q. Did you mention, maybe Mr. Bosch came to Switzerland or something like that? Was it Mr. Hermann Bosch who picked up these letters in Switzerland from you? A. I haven't seen him before.

Q. Before he came— A. Before he visited me.

MR. WILSON: That was after the war?

THE WITNESS: That was after the war.

MR. SCHWARTZ: I understood him to say Mr. Hermann Bosch came after hostilities were over.

11865 THE WITNESS: Yes.

BY MR. SCHWARTZ:

Q. Did you know whether he was in Switzerland during the war? A. No.

Q. Never heard about it during the war? A. No.

Q. So you don't know whether or not he was the man— A. No.

Q. —who came by your firm? A. No, do not know it.

Q. You're not sure it was not him? A. Wasn't sure, no.

Q. Do you know, as the possibilities of who came to you, whether that man was a member of Ahrens or a member of Farben. A. No, because I do not recollect the name and the occasion.

Q. I see. Did he come to your firm or did your firm carry them to him? A. I think he came, but I am not cer-

tain. Well, if that's all of interest, I must inquire into the details, because I have not handled such matters and therefore I am not acquainted.

Q. It wasn't the German Consul that you took the letters

11866 to? A. No.

Q. You can deny that? A. I deny that because I think that would have been reported to me.

Q. But you don't know that it wasn't so since you don't know who it was? A. Well, I have all certainty to assume that it was not to him. I mean I feel pretty sure.

Q. Will you deny it unqualifiedly? Will you? A. No, to the best of my knowledge it was not the case.

Q. But you couldn't deny it unqualifiedly? A. No.

MR. WILSON: I object to that. I think that has been answered.

THE MASTER: Well, he's answered it.

BY MR. SCHWARTZ:

Q. You mentioned this withheld correspondence when I asked you if there were any couriers and pouches involved in your communications, and what you have told us is the full extent of anything you know about couriers between you and Japan on Ahrens? Do you know anything else about the movement of material or mail by courier, by person, living person, between you and Ahrens during the war period?

11867 A. Well, at least that's all what comes now to my recollection.

Q. All right. Do you know anything about the use of governmental pouches? A. No.

Q. Of any kind? A. No.

Q. In the movement of mail between you and Ahrens? A. No.

Q. Can you deny that from your side, Basle? Can you say unqualifiedly no governmental pouches were used by your firm? A. Yes, I can say that. I mean I feel so sure

that if something along those lines had been done by one of my staff I would have been informed, and I do not know of such a thing.

THE MASTER: Your firm? Which firm does that mean?

THE WITNESS: H. Sturzenegger & Company. I always understood your questioning so that it referred to my firm, because I. G. Chemie had nothing to do with it.

BY MR. SCHWARTZ:

Q. Nothing to do with Ahrens during the war? Let me ask you that. Chemie had, so far as you know, absolutely nothing to do with Ahrens during the war? A. To my knowledge, no.

11868 Q. And it was your firm? As between you and Chemie, Chemie had no participation in this business with Ahrens? A. No, not at all. Nothing.

Q. Now, we have been talking about your mail communication. How about your cable communication, Mr. Sturzenegger? Did that go commercial in every instance? Via commercial carrier? A. I believe that cables were sent in the normal way.

Q. Well,— A. Now what route was chosen, I think that was up to the telegram company.

Q. I don't mean which telegraph company or what route the telegraph company used. I mean so far as your firm was concerned you used only commercial facilities? A. To my recollection, yes.

Q. No governmental facilities of any kind? A. No.

Q. As far as you know no governmental facilities were ever used? A. Not as far as I know. Never.

Q. Did you ever ask anybody to send a cable to Ahrens for you from undgr another name or from another place? A. Not to my recollection. I only remember that sometimes I think instructions about payment or so came from Berlin, probably Zefi.

11869 Q. What do you mean instructions came from Berlin? A. Well, there were, no doubt, as I have

told you, many remittances I think both ways, and I have seen in those documents that apparently Ahrens has on one or the other occasion when cabling to Berlin said payment of so and so much was to arrive at Basle; that that was for this or this transfer, something like that. I do not recall the details. I only—when you put the question I wouldn't exclude, therefore, that, for instance, in one or the other occasion I. G. Farben would have requested us to answer a cable or so.

Q. What do you mean by requested you to answer a cable? You mean requested you to send a cable to Ahrens for them? A. Yes, or to reply to cable.

Q. But Farben on one or two occasions asked you to cable Ahrens for Farben? Is that it? A. That I'm not sure. May be.

Q. Will you deny that Farben asked you at least one or two times to cable Ahrens for them? A. No. We were in business, banking connection, with both, so that would have been a normal service.

Q. I see. My original question was whether you had ever asked anybody to cable Ahrens for you. A. Not to my recollection.

* * *

11922 Q. All right. Do you remember that Mr. Schreck's account was opened with you by remittance from Ahrens with 107,750 Swiss francs and that thereafter blocks of 50,000 were added, three such blocks? Does that sum sound to you like— A. Gold?

Q. Oh, no, Swiss francs coming to about 257,000 Swiss francs. A. No, I can not recollect the figures.

Q. Does it help you to remember that Schreck was definitely a customer of yours? A. I think he was after you mention that, and the name independently came up and I have mentioned it to you.

* * *

11956 MR. WILSON: I want to make a statement on a point of law, and I am not seeking your Honor's ruling upon it at this time. If it should develop that it is a matter that your Honor should pass on at some time, of course I don't mean to indicate at this moment that under those circumstances you may not do it, or that I feel you may not do it.

Rule 26 of the Federal Rules of Civil Procedure, which largely governs this proceeding, permits the inquiry into matters which are hearsay to the witness. I don't think the word "hearsay" is in the rule as I remember it, but the criterion is that the inquiry shall be relevant, and that matters may be inquired of even though they might not be admissible in the trial of the case. The legal effect of that provision has been that hearsay may be elicited from the witness.

As your Honor knows, Mr. Sturzenegger is here largely upon the hypothesis that he is an official of the plaintiff. Your Honor recalls that this official position is that of a member of the board. He has power to sign jointly with another on behalf of the corporation. I assume that those two things would be indicative of official status.

Now, under another provision of Rule 26, admissions of an officer of a corporation may be used against the corporation,

11957 admissions elicited in the course of a discovery deposition.

My legal position is that admissions of a witness who is an officer of a party, which admissions are based upon hearsay, are not binding on his corporation and are not usable as admissions against the corporation.

Now, this isn't the first time I am raising this question. I raised it on the first day of the hearing, in Volume I, February 1, 1949, page 81. In objection to a question propounded by Mr. Schwartz I said:

"Now, let me interrupt to say this. The formation of

the Chemie corporation was prior to Dr. Sturzenegger's connection with the transaction."

Mr. Schwartz said:

"I understand that. He has pointed that out."

I said: "If you understand it, this is his recital of some of the things he has learned."

Mr. Schwartz said, "Obviously."

I said, "And not a binding admission of fact."

Mr. Schwartz said, "Well, obviously."

MR. SCHWARTZ: Are you finished with that page, Mr. Wilson? I wonder if I may append a footnote.

MR. WILSON: Well, I would like you to wait until I get through my statement, if you don't mind.

Now, I rely upon two propositions. I rely upon the proposition that this is the pronouncement of an acquiescence by

11958 Mr. Schwartz in that doctrine, but I add to it that that is my concept of the law nevertheless, and I thought that this was a good opportunity, on the opening of the cross-examination, to reiterate my position in this respect and to say that I mean it to apply in every situation that has occurred or may occur in the course of this deposition.

I have other things to say, Mr. Schwartz, but that is all for the moment about that proposition.

MR. SCHWARTZ: Well then, may I add a postscript to that, that you perhaps very understandably misread or read this thing to be an acquiescence. I have a note here that I was speaking in a short pause, or perhaps there was an unintended interruption, you interrupted me, and I was saying to your statement, "And not a binding admission of fact," "Well, obviously, Mr. Wilson, he wasn't there when it happened. He told us that and we understand it. Further than that I don't think we need to characterize what he is going to tell us. We just want him to tell us these things."

As you see from the end of that remark, I was not acquiescing in any characterization of the legal effect of these things.

MR. WILSON: I think that is a matter that may have to be determined by either the Master or the Court.

MR. SCHWARTZ: Certainly. Of course, on the matter of law I think you know we disagree, because an admission is just that

11959 and it is to be expected that parties don't make admissions without some sources. The sources are, of course, unimportant.

MR. WILSON: Well, I may add to that that we go back to the language of the rule which is that the statements made in a discovery deposition do not necessarily have to be admissible testimony, and partly by reason of that hypothesis I say that no matter what the admission may be, if the admission is based upon hearsay, it is not a usable admission. That is somewhat repetitious of what I have said before.

MR. SCHWARTZ: So our disagreement is plain on that.

MR. WILSON: I think so.

* * *

11964 CROSS EXAMINATION.

BY MR. WILSON:

Q. Mr. Sturzenegger, I would like to get into the record

11965 at this point, for the sake of orderliness, more details of your background. When were you born, Mr. Sturzenegger? A. On October 17, 1901.

Q. And where were you born? A. In Schaffhaus or Schaffhausen, Switzerland.

When were you born, Mr. Sturzenegger? A. On October 17, 1901.

Q. And are you a native Swiss citizen? A. Certainly.

Q. Are your ancestors Swiss? A. Yes; yes, they are.

Q. Is your name, Sturzenegger, a Swiss name? A. It is a well known, rather widespread, Swiss name.

MR. SCHWARTZ: Pardon me, Mr. Wilson. I am glad that the opportunity arises on such a preliminary question. It is relevant, though not important, but I would like to make a little statement now so that it will have more general application.

You are now engaged in cross-examination of a person for whose deposition we served notice as an officer or managing agent of plaintiff. You are, of course, counsel for the plaintiff, and of necessity, I suppose, counsel for this witness. On the question of leading questions in the course of your cross-examination, we have searched the authorities and find that they are non-existent. We nevertheless feel that in view of the circumstances, that the witness is certainly your witness in the sense that you are intimate with him, he is your

11966 client.

We feel that while the rule may not be inflexible it should be the rule that leading questions are improper. On a preliminary matter, of course, it doesn't matter. I can even think of a situation when the witness not appreciating what you are driving at, you are compelled to lead him. That is a perfectly open possibility. But we think in view of the fact that the witness is so intimate with you, as an officer of the plaintiff, that leading questions are to be at least frowned upon by the Court and the Master and are, perhaps, as improper as if you were calling him yourself.

MR. WILSON: Well, if the Master please, I can't acquiesce in any such proposition. I didn't come here this morning with any intention to achieve any advantage by asking leading questions, but the proposition that Mr. Schwartz offers is novel in his proposal about it. It is not novel in my experience, and I have seen this happen thousands of times, certainly hundreds of times, in the taking of a deposition under these circumstances, that any lawyer in my position is permitted to ask leading questions. I don't think here is the slightest doubt about it, and I propose to do it.

THE MASTER: Well, it seems to me I can only rule when there is a question, but frankly I don't myself know of any authority right square on the point, and I suggest that if the matter is going to cause serious difficulty we give each side
11967 a certain amount of time to look into it and then bring the matter up, let's say, at our next session.

MR. SCHWARTZ: We'll gather what we believe are the principles. I think the authorities are literally non-existent.

THE MASTER: All right.

MR. WILSON: Certainly my ten or eleven years' experience with the Federal Rules—and they have been in effect now since '38 or '39—with innumerable members of the bar on the opposite side, have developed for me an assurance that this sort of thing can be done. I have never heard the question raised seriously before, and I have never heard it discussed as being a serious point.

THE MASTER: Well, I assume Mr. Schwartz would argue it as a matter of principle, as he suggests. I think there ought to be opportunity for argument on it if Mr. Schwartz wishes to press the objection.

Let's continue today in our usual way, avoiding the difficulty if possible, and have the point brought up again at the next session.

BY MR. WILSON:

Q. Mr. Sturzenegger, will you state of what your elementary education consisted. A. Well, I went through the schools in my native town, Schaffhausen, elementary, secondary school, and Gymnasium, as
11968 we call it, and then began my studies at the university, and first studied at Zurich. Then, when——

Q. Wait. For how long at the University of Zurich? A. I believe it was one year.

Q. Well, as you give the location, will you state the period of time involved as well, as you go ahead. A. Well,

I am not absolutely certain in my recollection. It must have been about the year '20 or '21.

Q. You don't have to be too precise. A. Yes. And after this period, which I believe was a year, I went to Geneva and studied there, I think it was half a year, if I am not mistaken. Then I continued my studies in Munich and returned again to Zurich.

Q. What was the period of time involved in your pursuing the studies at Munich? A. Munich was two terms.

Q. Was that a half-year? A. No, it is a little more.

Q. Two-thirds of a year? A. Yes, something like that.

Q. And then where did you go? A. And then to Zurich, and I remained in Zurich studying law, I think about five more terms, until '26, I believe, '25 or '26. And then I continued and finished my studies at Leipzig, taking the doctor's degree there, and I remained at

11969 Leipzig for a two-term period, which is about three-quarters of a year or so.

Q. And the degree you got at Leipzig was what? A. That was the degree of a doctor of law.

Q. Let me ask you, before we go any further: Your studies prior to your beginning the study of law were in pursuit of what class of education? A. Literature and art, and what is connected with such things.

Q. Did you obtain a degree— A. No.

Q. —or did you simply accumulate credits? A. I just accumulated credits and then I dropped that and concentrated on law when I came back from Munich to Zurich.

Q. And did you obtain any degree from the University of Zurich in relation to your study of law there? A. No, no.

Q. The only law degree is that of doctor of law or doctor of jurisprudence? A. Yes.

Q. Which you obtained at Leipzig? A. That is it.

Q. Have you ever practiced law? A. No, sir.

Q. Are you a member of the bar of Switzerland?

11970 A. No, I am not.

Q. Is there some preliminary step which you

would have had to pursue in order to qualify as a member of the bar? A. Yes, I would have had to pass a special examination, which I haven't done because I had not the intention to practice as a lawyer.

Q. Did you take the examination? A. No, I didn't take it.

Q. Is it or is it not rather typical in Switzerland that there are numerous law graduates in your status? A. Yes, certainly.

Q. After completing your formal education, where did you begin to go into business of one character or another? A. I began at the Zurich private banking house named Guyer Zeller Bank, A. G.

Q. And about what year was that, Mr. Sturzenegger? A. It must have been about '28 or so.

Q. And for what period of time? A. About three-quarters of a year, a little more.

Q. Following that, what did you do? A. Then I went to England for about half a year to learn English, which I hadn't done before.

Q. When did you make Mr. Greutert's acquaintance? A. When I went back from England. I think it was somewhere in the year 1930 or '29.

11971 Q. And where did you go upon your return from England? A. Well, I was a short time in Schaffhausen. Then I, as I told you, made the acquaintance of Mr. Greutert and it was then arranged that before entering the firm definitely I should visit principal clients of the firm and people with whom Mr. Greutert was well connected. That means the Metallgesellschaft, A. G., and the Laenderbank, A. G.

Q. Did you go to Germany for some period of time? A. Yes, I went to Frankfurt and remained there several months during the winter season of 1930 and beginning '31, and in spring, early spring—I do not recollect the exact dates—I went then to Berlin and remained there for about three or four months.

Q. At what place, sir? A. I was there at the Deutsche

Laenderbank and made the acquaintance of some people of the Zefi—that means Central Finance Administration of I. G. Farben. The I. G. Farben Central Finance Administration was in the same building located, so I had occasion to meet some gentlemen there, too.

Q. Now, this brought you up chronologically to about what month in what year? A. About July '31.

Q. What did you do then? A. Then—I think it was in the middle of July '31—I returned to Basle and entered the firm Ed. Greutert & Company

11972 as an employee.

Q. And what was the nature of your employment or your status? A. Well, I was just one of the staff clerks. I had no right to sign at that time. I had to begin my career with the banking house.

Q. Your entry into the firm was coincident time-wise with what economic events in Germany, Mr. Sturzenegger? A. Well, I should say it was coincident with the beginning of the German foreign currency restrictions. I remember that the first provisions in this respect were issued during the last days I was in Berlin. It was the collapse of the Darmstaedter Bank. It was the starting period.

Q. Would you describe for the record a little something of the official set-up of the Greutert firm at this time. I mean, who were the leading individuals? A. Well, the leading individual was Mr. Greutert, the sole partner with unlimited liability. Working together with him as collaborator and director was Mr. Carlo Mollwo. Legally he was a Prokurist with the power to sign alone for the firm, I mean, not collectively. Then there was Mr. Haller. There were already there Mr. Werder, Mr. Sutter, and some others, but these are, or were at that time, chiefly the men I have in mind.

Q. To your knowledge, was Mr. Mollwo ever a partner in

11973 the Greutert firm? A. No, he was never a partner.

Q. And Mr. Mollwo died in what year, sir? A. I believe beginning of '47, if I am not mistaken.

Q. Was Mr. Mollwo natively a German? A. Yes.

Q. When did he emigrate to Switzerland, approximately? Can you fix the time? A. No, I am not absolutely sure. I have heard that he joined the firm Ed. Greutert & Company, I think, soon after the start of the firm. That means in the very early '20's.

Q. To your knowledge, did he reside continuously in Switzerland from the time you knew him? A. Yes.

MR. SCHWARTZ: Excuse me, Mr. Wilson. May I ask a question of you? Here is a matter, of course, which is clearly hearsay since, I take it, Mr. Sturzenegger did not know Mr. Mollwo at the time he emigrated. Yet you have stated that it is your position admissions based on hearsay are of no consequence. If you so believe, it seems to me only fair that you should not bother the record, the court, and all of us, with them.

MR. WILSON: I am not offering them as admissions, Mr. Schwartz.

MR. SCHWARTZ: What would they be?

11974 MR. WILSON: Just hearsay, just hearsay.

MR. SCHWARTZ: But not binding on plaintiff?

MR. WILSON: That's right.

MR. SCHWARTZ: Certain we, having no knowledge of them, couldn't use them at all.

MR. WILSON: That's right.

MR. SCHWARTZ: Then what is their purpose? What justification is there for their use at this time?

MR. WILSON: Just because I am permitted to do it, that's all.

MR. SCHWARTZ: Oh, your Honor, I would like to address myself to that very seriously. I thought there was this implication in Mr. Wilson's earlier remarks; I see it is so.

Your Honor knows that the hearsay which may be evoked on a discovery deposition is intended to serve the purpose of guiding a party in his search for other evidence. The classic illustration is, "Where is the body buried?" and the witness says, "I heard it was buried around the cor

ner," and then you run around the corner and find it, and you have got the body.

That is just what we asked him. We know very well when we ask him, "What did Mr. X, Y, and Z say at this meeting?" that unless Mr. X, Y, and Z are co-conspirators or unless there is some other good exception to the hearsay rule, it doesn't serve any purpose, except that we know that X, Y, and Z said it, or they were there that day and we can run around and ask

11975 them, "Will you testify? You were there."

Now, we do that with the witness because we don't know the witness, we haven't got the witness, we are discovering things. Mr. Wilson has unlimited access to this witness; it is his claim. He may ask him for all the hearsay in the world in their private sessions. He may have his assistance in dicovering evidence; presumably he does have his assistance, constant assistance. Yet presumably he proposes to come here and ask his own man hearsay for the sole purpose, I suppose, of bulking up the record.

It is perfectly relevant when Mr. Mollwo emigrated. We tried to establish it from Mr. Merton and Mr. Euler. The origins of this firm are important in this case. But Mr. Wilson wants his cake and wants to eat it and then waste our time looking at it, too. He wants to have it in for such value as it may have as it may influence you, but if he should ever slip and admit a fact that will do him no good, he wants to be able to reject that fact, not offer it, have us not offer it, and the whole thing is a waste of time. That, we submit, is improper and unfair.

If Mr. Wilson wants these facts to be of record, then he should plan that we use them. If he would deny us our right to use them, he shouldn't waste our time because he knows them very well.

THE MASTER: Do you wish to make any reply, Mr. Wilson?

11976 MR. WILSON: Well, I would say this, if your Honor please, that certainly Mr. Schwartz doesn't mean to argue that I can't cross-examine with respect to hearsay. I can't sit here, certainly, on the so-called direct examination by him of Mr. Sturzenegger and have my hands tied so that I can't object to the introduction of hearsay and then be foreclosed from cross-examining in respect to the same sphere.

This matter has been expanded from the point of view of inquisition by the rule, but it hasn't been expanded with respect to the legal admissibility of the admissions. That is my position. It would be utterly silly to say that I couldn't cross-examine about hearsay.

THE MASTER: Well, I think the rule on discovery is a wide area of inquiry on direct, and an equally wide area on cross, and it seems to me that while there is something in what Mr. Schwartz says, it goes to the probative value of whatever is produced, rather than to restrict the line of cross-examination about which I think we have got to be very careful.

And furthermore, I am not sure that on this series of questions it is hearsay. It seems to me that the prior direct has developed Mr. Sturzenegger's contacts with the business and matters of the sort that we are now inquiring into, Mr. Mollwo's place in it. I am not sure at all that it would be hearsay. At any rate, is there any specific question as to which objection is made?

11977 MR. SCHWARTZ: I only meant to make it as a matter of form. The date of Mr. Mollwo's emigration, I thought, was the closest point to true hearsay that was coming into the testimony. I wanted to use that question. I wanted to say that it would be technically hearsay, and if Mr. Wilson believed that hearsay was not binding on his client, it had no function here at all and so he should restrain himself.

Your Honor, I don't mean to restrict the cross one whit. I wouldn't want that. But if Mr. Wilson does elicit facts

in the course of his examination—after all, the rules say that either party may use any testimony developed on a deposition—if he elicited, let's say, this fact which is admittedly and agreedly hearsay, he should not be permitted to take a position which will allow him to use it if he likes it by adopting it on behalf of his client, and deny us the right to use it on the ground that it is an admission based on hearsay.

If he is prepared to say that the facts he elicits may be used by us, he is more than welcome to elicit any facts that he in his discretion believes to be relevant, but if he is going to reserve the position that he may deny us the right to use any of these facts, he shouldn't produce them.

THE MASTER: Well, on the specific question of, "When did Mr. Mollwo come with the company?" the ordinary ruling of a court on objection would be, "He can answer if he knows," and then the sources of his knowledge would be explored on cross-

11978 examination, or redirect in your case. But let us proceed.

BY MR. WILSON:

Q. Did Mr. Mollwo become a naturalized Swiss citizen? A. Yes, he did.

Q. Now, Mr. Haller is dead, is he not? A. He is dead.

Q. Did Mr. Haller die while he was employed by the Greutert firm or after his retirement, Mr. Sturzenegger? A. No, while he was employed, but he was sick a long time.

THE MASTER: Who is this? Haller?

THE WITNESS: Yes.

MR. WILSON: Haller.

BY MR. WILSON:

Q. And Messrs. Werder and Sutter are still employed by the firm? A. They are still employed.

Q. Now, at the time that you came with the firm in 1931, will you state whether you recall dealing with Messrs. Mer-

ton and Euler or the firm Metallgesellschaft, as members of that firm?

MR. SCHWARTZ: Objection. It seems to be full of assumptions and conclusions. I may be all wrong, but perhaps you could break it up.

THE MASTER: What is the question?

11979 (The pending question was read by the reporter as follows: "Now, at the time that you came with the firm in 1931, will you state whether you recall dealing with Messrs. Merton and Euler or the firm Metallgesellschaft, as members of that firm?")

THE MASTER: I think it is permissible, Mr. Schwartz.

THE WITNESS: Well, I didn't deal personally with these gentlemen. I had made the acquaintance of these gentlemen and they came to Basle, that I remember. But as I stated before, I was more or less a junior clerk or in some minor position, so matters of great importance were not dealt with in my presence.

BY MR. WILSON:

Q. Well, let me see if I can come more directly to the point, Mr. Sturzenegger. You recall that in the history of this matter there was a time when those gentlemen withdrew activity, but remained in the Commercial Register for several years. A. That's correct.

Q. I am speaking now about the period involved beginning with the time when they withdrew activity. A. Yes.

Q. And the time when their names were taken from the Commercial Register. A. Yes.

11980 Q. Were they active in the firm to your knowledge at that time? A. No, they were no longer active, but they were, as you stated, still figuring in the Commercial Register.

Q. You do recall, do you, that there did come a time when their names were removed from the register as partners of the firm? A. Yes.

Q. Can you fix that time approximately by year? A. Approximately, yes. I should say in '37.

Q. Now, do you recall the event of the acquisition by I. G. Chemie of a participation in the Greutert firm? A. Yes.

Q. And will you fix approximately the date of that event. A. It was during the year 1933, I believe the end of '33.

Q. Now, when did your status in the firm change, if it did change, from that of being a clerk? A. Well, in the year 1934 I was made a Prokurist. That is to say, I was empowered from then on to sign collectively with others authorized to sign for the firm. And in '38 I became an unlimited partner, besides Mr. Greutert.

Q. And will you state whether, upon your entry into the firm, a formal partnership agreement was executed.

11981 A. Yes, sir.

Q. Prior to your entry into the firm, had you participated in any very large matter between the Swiss side and the German side in some affairs? A. Yes, I remember especially this so-called general compensation business where I took a very active part.

Q. And during what period of time were you so engaged, Mr. Sturzenegger? A. In this specific transaction?

Q. Yes, approximately what period? A. Well, about '36, '37.

Q. And you completed that work before you became a partner of the firm? A. Yes.

Q. Will you state whether prior to the execution of the partnership contract in which you were recognized as a partner there was another participant in the Greutert firm. A. Yes.

Q. Immediately prior to it? A. Immediately?

Q. I mean I am not going back to 1920 at the moment. I mean immediately prior to 1938, was there another participant in the Greutert firm besides Chemie and besides Mr. Greutert? A. Yes, sure, it was the Industriebank, A. G.

11982 Q. And what was the status of Industriebank in the Greutert firm? A. The Industriebank was a limited partner. The German technical term is "Kommanditaerin."

Q. And do you recall of your own knowledge the event, and approximately the time of the event when Industriebank entered the Greutert partnership as a limited partner? A. If I am not very much mistaken, towards the end of '37, the very beginning of '38.

Q. And do you recall whether Industriebank succeeded to the interest of any preceding limited partner? A. Well, may I just perhaps come back. I am not quite sure in my recollection whether I have shifted it one year. I think it was '36-'37, not '37-'38.

Q. Now, then, my additional question, if you remember— A. Yes.

Q. —is: Do you recall whether Industriebank succeeded to the position of limited partner which was occupied by some other entity, and if so, who? A. Yes.

Q. Which one? A. That was the Visca, A. G.

Q. And do you recall who was the representative or alter ego of Visca? A. That was Mr. Mollwo. He acted representing Visca

11983 during this intermediary period.

Q. And can you fix approximately the time of the intermediary period? A. I think he took over this task in the year '31 when the participation of the Metallgesellschaft was bought out.

* * *

12019 Q. You were asked some questions about a loan of I think 6 million Swiss francs made by the Swiss Bank Corporation to Farben during the war. A. I believe 3 million, if I may correct you.

Q. I beg your pardon. Three million Swiss francs. Your firm participated in that loan to what extent, Mr. Sturzenegger? A. With one-sixth, to my recollection.

Q. I think there was some question about what the col-

lateral was, what the security was, for that loan. Did you
12020 hold any security for that loan? A. No, we didn't.

Q. Do you know whether the Swiss Bank Corporation held security for that loan? A. Yes.

Q. What was that security? A. The security consisted of products of I. G. Farben stored in Switzerland and pledged to the Swiss Bank Corporation as collateral for this loan. And the firm Greutert—that is, my firm—had only a sub-participation with the Swiss Bank Corporation to the already mentioned extent.

Q. Mr. Sturzenegger, do you know what I mean by "warehouse receipts"? A. I believe it's the same—I think we call it "warrants"——

Q. Warrants? A. —in Europe.

Q. Lager-varrants? A. Yes. I mean it's a document the possession of which gives you the power to dispose of the material——

Q. Property on storage in warehouses? A. Yes. And I think it was called by the Swiss Bank Corporation—at least I remember this expression in the correspondence—a "warrant credit" sometimes.

THE MASTER: Did that pledge inure to the benefit of
12021 Sturzenegger and Company?

THE WITNESS: Pardon me?

THE MASTER: Did that pledge inure to the benefit of Sturzenegger & Company? You testified a minute ago you had no security for your one-sixth.

THE WITNESS: No, it was pledged to the Swiss Bank Corporation, and we were a sub-participant in this credit. And in so far, of course, under the Swiss Bank Corporation, we were participating as a participant in the collateral. I mean, for instance, if the material pledged would have been sold in the event the German debt would not be repaid, I think Swiss Bank Corporation would have been

under obligation to distribute the proceeds of such a sale according to the percentage figures.

THE MASTER: That would include your firm to the extent of its one-sixth?

THE WITNESS: Yes.

MR. WILSON: I think, your Honor, Mr. Sturzenegger probably understood my question to mean whether he separately held any collateral.

THE WITNESS: Yes, that's right.

MR. WILSON: The answer is you did not separately hold any, Mr. Sturzenegger?

THE WITNESS: We did not, no.

BY MR. WILSON:

12022 Q. Mr. Sturzenegger, there were some questions about Farben bonds received from Koopmansbank and delivered, I think, by your firm to some Swiss bank. A. I remember that, yes.

Q. Have you any additional information upon—— A. Yes.

Q. —that point, sir? A. Yes. My information is that the firm Greutert-Sturzenegger received in the course of the year 1940 two parcels of I. G. Farben debentures to the amount, nominal amount, of 750,000 March each. Both were delivered to us through the Swiss Bank Corporation for account of Koopmansbank. And then we received, if I am not mistaken, in the year 1941 the information from the Koopmansbank, for which we held this parcel of altogether 1.5 million Reichsmarks I. G. Farben debentures on deposit, that they belonged and had a long time, some years belonged, to I. G. Farbenindustrie. And we were requested by the Koopmansbank to put these I. G. Farben debentures to the disposal of I. G. Farbenindustrie.

Then I. G. Farbenindustrie requested us to put them at the disposal of Deutsche Laenderbank. And so it was done. And then the following development is in my mind:

The firm Greutert-Sturzenegger had from prior time on

deposit with Deutsche Laenderbank I. G. Farben debentures in the amount of approximately 700,000 Reichsmarks, if I am not

12023 mistaken, for the account for clients. And as I have already referred to, held from this Koopmansbank transfer 1.5 million Reichsmarks of the same debentures to the disposal of Laenderbank. We carried through a set-off; leaving a balance of about 800,000 Reichsmarks of I. G. Farben debentures in favor of Laenderbank. And this parcel of about 800,000 Reichsmarks I. G. Farben debentures was upon request of the Laenderbank transferred to the Credit Suisse, Basle, I believe in the year 1942. That is the best of my recollection.

Q. For whose credit? A. I believe for the credit of Zefi.

Q. Was any part of this transaction submitted to the Swiss Compensation Office for its approval? A. Yes, because when these two parcels of 750,000 Reichsmarks each were transferred to us they were first transferred for account of a Dutch owner—means the Koopmansbank—and that meant that they came under the prescriptions of some Federal decrees. And before then putting them, upon the request of Koopmansbank, at the disposal of Zefi, respectively, the Laenderbank, we had to submit the case to the Swiss Compensation Office. I remember that.

Q. Did you get approval from the Swiss Compensation Office? A. Yes, we did.

12024 Q. Approval to what effect? A. To put these I. G. Farben debentures which were unblocked by the decision of the Swiss Compensation Office to the disposal of Zefi as requested by Koopmansbank.

Q. Now, I think you testified with respect to a participation in a Dutch bank loan, Amsterdamsche Bank. A. Yes.

Q. Do you remember the extent of your participation? A. Yes.

Q. In that loan? A. Yes. It was one-fifteenth, a sub-

participation to the amount of one-fifteenth. And in guilders I believe it was 368,000 guilders or florins.

Q. The total amount of guilders involved was over 5 million? A. 5,520,000 florins.

Q. Expressed in dollars, what was that, about? A. I think about $3,000,000.

Q. Do you remember approximately when that loan was —— A. In 1938.

Q. —negotiated? A. Yes. In 1938.

Q. Do you recall any of the collateral that the Amsterdamsche Bank received as security for that loan? A. Yes. I have checked that; and my information is

12025 that the securities Amsterdamsche Bank received as collateral for this loan consisted of 72,000-and-some Norsk Hydro shares. Further, of 60,000 shares Agfa Ansco, which were put at the disposal of Amsterdamsche Bank with some New York bank—I believe Brown Bros. Harriman. And, in addition, I believe there were arrangements whereby certain sales proceeds of I. G. Farben were to be transferred to Amsterdamsche Bank as additional collateral. I mean the proceeds out of products sold by some sales companies.

Q. Mr. Sturzenegger, are you able to identify the 72,000 odd shares of Norsk Hydro stock to which you referred just now? A. Yes.

Q. Which block was that? A. That was the block of Norsk Hydro shares which were sold from I. G. Chemie via Greutert & Company to Ammoniakwerk, Merseburg.

Q. At that time—that is to say, in November of 1938, or sometime in 1938—do you recall who had possession of that block of shares? A. Up to that time about they were, as I have seen, deposited with Ed. Greutert & Company for account of Ammoniakwerk, Merseburg, to which latter company they were sold already in 1932.

Q. Did Greutert relinquish possession of them when they

12026 became collateral for the Amsterdamsche Bank loan, if you remember? A. Yes, already before.

Q. Before then? A. They were disposed of in such a way that they were sent in 1938 to Laenderbank for account of Ammoniakwerk, Merseburg, and from then on there was no longer any connection.

Q. While we are speaking with relation to these 72,000-odd shares, I will skip over for a moment to your testimony this year at some time in connection with which you were asked about the date of the acquisition of some of those shares by Ammoniakwerk, and I think you were a little unclear about it at that time. A. Yes, I was unclear.

Q. What is your testimony now as to the history of those shares? A. Well, if I am not mistaken, and if I can recollect it properly, it's the following: About 106,000 shares were acquired by I. G. Chemie in 1929 or 1930. Then I. G. Chemie got another block of about 38,000, which brought up the total holding of I. G. Chemie for a short period to roughly 144,000. Then 72,000 and 430, or something like that, about half of the entire parcel, were sold from I. G. Chemie via Greutert to Ammoniakwerk, Merseburg. That's the parcel I have mentioned and you referred to.

12027 Q. About what year? A. About the end—must be end of 1931 or beginning of 1932.

Q. Now, were those registered shares or were they bearer shares? Do you remember? A. They were registered shares, to my recollection.

Q. And at that time—rather, just prior to that sale—was the full quantity of those shares registered in Chemie's name? A. Yes, that's correct.

Q. And upon the sale of about half of them to Ammoniakwerk, was there a change in the registration of those shares? A. They remained in the name of Chemie until 1938. Was that the question you——

Q. That's right. A. And they remained there as security for the claim Greutert had to Merseburg out from the sale, because Merseburg didn't repay that in cash,

Q. Now, with respect to the other portion of the block, approximately the same quantity,— A. Yes.

Q. —about—were they owned continuously by Chemie? A. Yes, they were.

Q. In its own behalf, sir?

12028 A. Yes, they were.

Q. They were not held for Merseburg? A. No, no.

Q. Nor for any other branch of Farben? A. Nor for any other.

Q. Do you have any recollection as to whether the registration was changed in 1938 at the time of this sale or simply an assignment executed by Chemie of the shares? A. I do not remember how technically it was done, but the change took place in 1938 to the best of my recollection.

Mr. Schwartz: Pardon me, Mr. Wilson. Did I understand Mr. Sturzenegger to say that the block that remained in the name of Chemie until 1938 was security for the claim Greufert had against Ammoniakwerk by virtue of the sale?

Mr. Wilson: The block to the extent of 72,000 shares.

Mr. Schwartz: 72,000 was security for this sale?

Mr. Wilson: Yes.

Mr. Schwartz: May I ask, to save it being at a great distance—that means then that Chemie was paid by Greutert on the occasion of the sale in 1932?

The Witness: Well, it was credited for the countervalue, and Greutert debited Ammoniakwerk, Merseburg, when they were sold to Merseburg.

Mr. Schwartz: Then when they were transferred to

12029 Laenderbank for the account of Merseburg, there was no further payment but——

The Witness: No. I think that was straightened out before between the last general compensation. And I have not checked that, but my recollection is that then all these claims we had towards Merseburg, amongst others this claim resulting from the sale, were compensated and set

off, so there didn't exist any longer any claim after the general compensation dates.

By Mr. Wilson:

Q. Mr. Sturzenegger, have you any knowledge or any speculation as to the outcome of the 60,000 Agfa Ansco shares that were pledged as part of this collateral for this loan? A. Yes.

Q. Is that knowledge or speculation? A. No, I mean I have tried to inform me about the situation.

Q. All right. A. And as far as I know now, part of this 60,000 shares, Agfa Ansco shares, were sold at some time, which I do not recollect, and the remainder, about 48,000, were later on, upon the occasion of the merger of General Aniline and Film Corporation, changed into American I. G. Chemical or General Aniline and Film Corporation shares. And the result must be it was about one-third, about 16,000—

12030 Q. GAF shares? A. GAF shares.

Q. For the 48,000 Agfa Ansco shares? A. Yes.

Mr. Schwartz: I confess I didn't understand that. Mr. Sturzenegger said part were sold. Do I take that to mean 12,000 of the 60,000 were sold?

The Witness: Yes, 12,000 were sold.

Mr. Schwartz: By whom to whom?

The Witness: They were collateral for the Amsterdamsche Bank, and that's I think how we learned it. I believe some American parties, though I am not sure.

Mr. Schwartz: By whom? By Amsterdamsche Bank realizing on the collateral? You mean the loan was never paid and the collateral realized on?

The Witness: I believe so. I'm not absolutely certain about it.

Mr. Wilson: We're coming to that.

Mr. Schwartz: As to the source of the 60,000, whose were they when they were placed with Amsterdamsche?

The Witness: They were I. G. Farben's property. They

were given by I. G. Farben as collateral for, amongst others, for this loan of 5.5 million Dutch guilders.

MR. SCHWARTZ: The division of part of the 48,000 has to do with what happened with them after?

12031 THE WITNESS: Yes. Later on.

MR. SCHWARTZ: All right. You go ahead.

MR. WILSON: You remember there were some 16,000 GAF shares in Brown Bros.' possession, vested by 907 I think.

MR. SCHWARTZ: For which you have not filed claim? Am I right?

MR. WILSON: No; we claim 191 shares I think out of a block but not out of this portion of the block, as I remember, under the vesting number 907.

BY MR. WILSON:

Q. Mr. Sturzenegger, do you have a general recollection as to the terms for the repayment of the loan by Farben to the Amsterdamsche Bank syndicate? A. Well, I have only a recollection as to the handling of our—I mean Greutert's—subparticipation. How the arrangement then between Farben and Amsterdamsche Bank and the other participants were, that I do not recollect.

Q. Well, state what your recollection is about the repayment of your one-fifteenth. That is to say, first, what were the terms of repayment? A. The terms of repayment, according to the loan contract, was that the loan should be repaid in five equal yearly installments, and my recollection is that the first installment was properly repaid and then war broke out and the invasion of the Netherlands took place which changed, of

12032 course, the situation. And then I remember that we in Basle—meaning myself and my firm—were worried about the fate of our remaining claim. It was—it seemed, as a consequence of the invasion, to be blocked and endangered.

And then we came in negotiations with representatives of I. G. Farben to a solution which I believe I have already

mentioned in a previous deposition. And to summarize it, it came to the following:

That the firm Sturzenegger had to put at the disposal of I. G. Farben a sum equal to the remaining credit line—I believe 600,000 Swiss francs roughly—and then our sub-participation in the Amsterdamsche consortia loan was repaid at once in cash. On the other hand, we had then this claim resulting from this already mentioned payment towards I. G. Farbenindustrie which was to be repaid, if I am not mistaken, in three yearly installments. And it was done so. I mean the whole arrangement was a liquidation measure, and the aim was to, if possible, liquidate our sub-participation under the Amsterdamsche Bank without loss.

Q. Let me retrace that a moment to be sure that this appears clear to all of us. Your sub-participation was about 368,000 guilders? A. Yes.

Q. Which, converted into Swiss francs at that time, was equal to about what, sir?

12033 A. Roughly 800,000 francs.

Q. And the first 20 per cent of that loan was paid at its maturity date? A. Yes.

Q. Then war had or was about to break out in Europe and the other payments were not made according to the schedule of that loan? A. Yes.

Q. Now, you made a new arrangement with Farben about the remaining four-fifths? A. Yes. About 600,000 francs.

Q. About 600,000 francs? A. Yes.

Q. And approximately when was that new arrangement made? A. 1940 or beginning 1941.

Q. And you lent Farben at that time the equivalent— A. We lent the same sum which was necessary to repay our participation.

Q. All right. And that liquidated the old participation? A. Yes.

Q. But set up a new loan? A. Yes. And I mean this

liquidating of the old could only be made—that was a condition—by this construction, by granting temporarily this new loan. And this then was to

12034 be as a so-called "Neukredit"—new credit—to be repaid as new credits in I believe three equal yearly installments.

Q. Was the interest rate affected by this rearrangement? A. Yes.

Q. In what respect? A. It had to be reduced.

Q. In other words, do you remember what interest rate you were getting on the original participation? A. I'm not quite sure. I believe it was a little more than five per cent—five or five and a half.

Q. Do you remember the new rate or do you just simply remember that it was lower than the old rate? A. It was lower, and I believe it was four or less.

Q. Now, was that loan met at maturity in the three equal yearly installments? A. Yes. To my recollection, yes.

Q. Did I ask you this question? Did you hold any collateral physically for that loan? A. No, we didn't. I mean we had a right as sub-participant.

Q. You had the benefit of the general collateral, but I'm asking you physically if you— A. Were not deposited.

Q. —held any collateral.

12035 Do you know who else participated in the Amsterdamsche Bank loan? A. I believe the Koopmansbank were among the participants.

Q. Is that the only one whose identity you remember at the moment? A. Yes.

Mr. Schwartz: May I, Mr. Wilson?

Mr. Wilson: Sure.

Mr. Schwartz: Do you remember what proportion of the total Koopmansbank took?

The Witness: No, cannot remember.

Mr. Schwartz: Whether it was one-sixteenth or three-quarters?

THE WITNESS: Cannot remember.

THE MASTER: Mr. Wilson, do you happen to have any record references for this particular matter that you are discussing?

MR. WILSON: Yes. You will find the subject of the Swiss Bank-Farben loan, also the subject of the delivery of the Farben bonds from Koopmans, also this immediate subject in Volume 14, which was the first full day this year, January 10, 1950.

I now want to refer to the subject which I described from time to time as the "escudos transaction," which was developed by Mr. Schwartz in the deposition last year.

I
12036 refer to Volumes 5, 6 and 7, being, respectively, February 7, 8 and 9 of 1949.

THE MASTER: What's the page?

MR. WILSON: I think the escudos may begin, sir, at page 680. It was a long subject. I am not certain, sir, that that is the beginning, but I have an idea that it may be.

Mr. Schwartz, may I have, if it's handy at the moment, your Exhibits beginning with 1 and going through——

MR. SCHWARTZ: You probably mean 2. No. 1 was a Teerfarben document.

MR. WILSON: Beginning with 2 and going through 15.

BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you for purposes of beginning with this subject and in order to orient you and the rest of us, the documents which were shown you by Mr. Schwartz last year and which bear the following symbols for exhibit purposes: 2-19740(2)-1; 3-19740(2)-2; 4-19717; 5-19719; 6-19730; 7-19776; 8-19780; 9-19720; 10-19732; 11-19774; 12-19777; 13-19775(2-1); 14-19775(2-2); 15-19781.

(The witness examined the documents.)

Q. Mr. Sturzenegger, have you looked at each one of those exhibits, sir? A. Yes.

Q. And do you recall that you were shown those exhibits by Mr. Schwartz last year?

12037 A. Yes, I think so. I'm quite sure they were.

Mr. Wilson: I now ask the reporter to mark the following documents, all of which bear Department of Justice basic numbers and all of which were seen by me or Mr. De Graffenreid or both of us upon our inspection last summer, which, chronologically, was at a time after the questions were asked Mr. Sturzenegger with respect to Exhibits 2 to 15, inclusive.

* * * *

12044 Mr. Wilson: Yes, your Honor.

Before making this informal statement with respect to my version of the escudos transaction I want to make, if not a correction, a little additional explanation on the record. Your Honor, yesterday I think that I identified for the record Government's Exhibits 2 through 15 as having been shown to Mr. Sturzenegger by Mr. Schwartz. I don't think I referred yesterday to Exhibits 16 and 17. I should add that Exhibits 16 and 17 do relate to this same subject matter and that they are identified in Volume 8, the hearing of February 10, 1949.

Mr. Schwartz: As a footnote to that, Mr. Wilson, may I add that—that's perfectly right, but you marked yesterday the documents whose basic numbers are those of Exhibit 16 and 17.

Mr. Wilson: I'm coming to that.

Mr. Schwartz: Sorry.

Mr. Wilson: That's the reason I am now speaking.

As Mr. Schwartz has indicated—and it was largely the purpose of my making the statement—I think I have overlapped my exhibit numbers with 16 and 17, certainly 17.

12045 Mr. Schwartz: And also 16. Your Exhibits 19 and 20, as you marked them yesterday, were, in fact, Exhibits 16 and 17 already in.

MR. WILSON: Yes. I agree with that, your Honor. I will not change my numbers, but since the record shows the overlap I would rather leave it that way than change the sequence of the numbers.

THE MASTER: I think so.

MR. SCHWARTZ: I'm sorry, Mr. Wilson; I'm just trying to help. Another point in that same area is that although you apparently intended to mark every document even remotely relating to this credit matter, you neglected three, and we wouldn't want you to be without them since each one of them is so infinitely valuable to your cause, so you may want to make a note you may also want to mark 20303, 20140 and 19820.

MR. WILSON: I wonder if you have copies of those here.

MR. SCHWARTZ: We probably do.

Then because last night we saw how comprehensive you were setting out to be, we tried to retrace your steps and see what you had left out, and we found to our unhappy surprise that there is still another document relating to the tin deal which we did not let you inspect out of error. But don't you get your hopes up too high now, Mr. Wilson. We're going to give it to you now, and we're going to hold you certainly as to that document to your undertaking to introduce

12046 every one of them and discuss them with the witness. I was very unhappy yesterday to find that our remarks about the treatment of these exhibits were not in the transcript, but I do want to say, and I think I shall have occasion to say it again, that we intend to remind you often of your undertaking that you will show each one to the witness and discuss it with him—for so long as the Master's patience holds out, you will be urged to continue to try his patience.

There is 19715. It is our only copy. But please use it as you like.

MR. WILSON: Now, is 19715——

MR. SCHWARTZ: Oh, another point, Mr. Wilson. When

you called Exhibit 39-19856 you no doubt, we are sure, meant 19855.

MR. WILSON: I will come to that in a minute. You stated a few moments ago that a document that I should have seen last summer, which I was not shown, is 19715. Is that correct?

MR. SCHWARTZ: That's right. 19715. And there it is. I have given you our only copy.

MR. WILSON: Mr. Sturzenegger, I hand you this document 19715 which we will prefix 88, since you have never seen it before either, and ask you to look at it.

(The document and translation referred to were marked for identification as Plaintiff's Exhibit 88-19715.)

12047 (Mr. Sturzenegger examined the document.)

MR. WILSON: Now, gentlemen, while Mr. Sturzenegger is looking at that, may I have 20303, 20140 and 19820?

(Mr. Wilson examined the documents referred to.)

MR. SCHWARTZ: For the record, I would like to say that our mistake in not showing you 19715 last summer, we discover, was due to the fact the document at the time was attached to a memorandum by one of our lawyers and was thus not in its right place for finding the documents that we gave to you. We have constantly screened every set of documents that have come to the forefront, and this is the first such instance we have found.

MR. WILSON: I make all reservations about that omission on your part, Mr. Schwartz.

MR. SCHWARTZ: Certainly.

MR. WILSON: I reserve the right to complain about it on any occasion that I may have. The only thing that overcomes it is the unimportance of the paper.

MR. SCHWARTZ: I think quite the contrary.

Now, Mr. Wilson, when we are through with your preliminaries and before you make your opening statement, I would like to make a short statement, if you will——

MR. WILSON: In what respect?

MR. SCHWARTZ: In regard to the exhibits you marked yesterday.

12048 MR. WILSON: I object to it.

THE MASTER: Well, Mr. Wilson, I am completely in the dark as to the nature of the statement. We have to have something on that at least.

MR. SCHWARTZ: Well, your Honor, I can say without making the statement that I would like to make that the oddity of the marking of such a large number of exhibits in gross was apparent to all of us even yesterday, and I believe it is much more than an oddity, but it bespeaks a matter which ought to be called to the attention of you, sir, I believe. It has implications as to the procedure. It is in the nature of a point of order, you might say, in parliamentary language. So I would like, if I may,——

THE MASTER: I think you are entitled to make that statement.

MR. SCHWARTZ: All right, sir. Thank you.

Your Honor has already appreciated that Mr. Wilson has marked every single document he knew to relate in any manner whatsoever to this transaction of the escudos and the Swiss francs. There is, either in the very fact or he said something to that effect, the implication that these are relevant. Certainly calling them to the attention of your Honor, having them all marked and proposing to show them all to the witness is a representation that they are relevant.

Now, we deny that categorically, and we think it would

12049 be perfectly clear as day as the proceeding goes on that they are not in the least bit relevant. These documents concerned aspects of this transaction about which Mr. Sturzenegger knows nothing and can know nothing. It's for that very reason that we did not use them.

It goes without saying that if there were any evidence

we thought could be developed from Mr. Sturzenegger on those documents we would have tried to develop it. They in almost every case are documents between Germany and Spain or within Germany which from their face show that they are unrelated to Mr. Sturzenegger.

Now, Mr. Wilson is, of course, entirely intimate with the witness. He has talked with him about this matter. It would be obvious to any lawyer and certainly to the counsel for the witness that the witness knows nothing about these documents. He can not speak of his knowledge of the facts in those documents at all. So, Mr. Wilson is engaged in a glorious, simply enormous waste of your Honor's time. He is, in effect, insisting that by this hocus pocus method you must read these documents to learn facts which cannot be proven today.

Eventually we expect to have witnesses, if we deem it necessary, who will testify to those facts, but Mr. Sturzenegger couldn't possibly. However, I don't want this to be taken as an objection to Mr. Wilson's plan. I wouldn't dream

12050 of being put in the position of urging that something be suppressed. If Mr. Wilson wants to pull the leg of this court by putting all these documents in, he is more than welcome, because I think he will very soon demonsfrate just what he is doing.

THE MASTER: Mr. Wilson?

MR. WILSON: If your Honor please, I probably shouldn't be smiling. I should be extremely irritated that an accredited representative of the Department of Justice should refer to me as indulging in hocus pocus and in pulling the court's leg. However, somehow at this moment—probably as a result of a very delectable luncheon—I am not in the bad humor that I may be as I progress.

Moreover, I am constrained to take with a grain of salt a criticism of this character from a man who has indulged in the most colossal hocus pocus that I have ever been privileged to attend. Talk about offering hearsay that

this witness would know utterly nothing about for the purpose of not only pulling the court's leg but stuffing the court's mind, which is far more serious. And so, as I say, the pot in my judgment is far blacker than the kettle I'm sure.

Now, getting down to the meat of Mr. Schwartz's objection, and wiping the smile off of my face because it becomes far more serious, I want to say that your Honor was not with us last year and I don't know whether you will ever appreciate

12051 the machinations that Mr. Schwartz indulged in in the examination of Mr. Sturzenegger with respect to the escudos transaction. You will be reminded that chronologically Mr. Sturzenegger was interrogated about the escudo transaction in February of 1949. You will be further reminded that it wasn't until the summer of 1949 that I had the privilege of inspecting the Government's documents. Mr. Sturzenegger was on the stand in February of 1949 being interrogated about an involved transaction which was then six years old, and Mr. Sturzenegger, having been dependent and being dependent to a large extent on a staff, as any banker would be, was unclear about a number of the features.

I want your Honor, after you hear what I want to offer about the escudos transaction, and after you look at these documents that I want to show Mr. Sturzenegger, to go back and read in Volumes 6, 7 and 8 the manner in which the Department of Justice undertook to third-degree—and I use that term advisedly and deliberately—to third-degree this witness with respect to the escudos transaction.

Mr. Schwartz was in absolute possession of knowledge as to the denouement of the escudos transaction, and, despite the fact that he knew and I didn't know and Mr. Sturzenegger did not know what was the ultimate outcome of the escudos transaction, he interrogated Mr. Sturzenegger on the hypothesis that Mr. Sturzenegger was a criminal in this transaction.

12052 Now, the documents which I want to show your Honor and which belong in this record beyond any peradventure, are documents which show that after Mr. Sturzenegger wiped his hands of this transaction and would not carry it through that it was carried through in other manners, and that Mr. Sturzenegger had utterly nothing whatsoever to do with the transaction henceforward, and that the transaction was so efficiently handled by other means that there came a time when it was necessary to remit an additional 20 million escudos and no approach was made to Mr. Sturzenegger to have anything to do with the transaction whatsoever. And it was carried through in another fashion.

Now, my object is twofold. And I don't blame Mr. Schwartz from his point of view to have wanted to make this preliminary statement, and I don't blame him for one moment for trying to prevent me from putting on the record of this case these exhibits for the reason that they not only serve the purpose of establishing, as I say, beyond any peradventure, that Mr. Sturzenegger is one hundred per cent blameless in this transaction, but that Mr. Schwartz is entitled to complete condemnation for this type of an interrogation of a witness having in his possession at the time full information that would have acquitted Mr. Sturzenegger of any possible complicity in the matter.

THE MASTER: Well, now, does that bring us to the
12053 point where each side wishes to make a statement about the nature of the escudos transaction?

MR. WILSON: Yes.

MR. SCHWARTZ: I think so too, sir.

THE MASTER: All right. Do you care to begin, Mr. Wilson?

MR. WILSON: Yes, I do, your Honor.

I am going to return to you gentlemen from the Department of Justice 20303, 20140 and 19820. I don't say that they are not a part of this sequence. I think, however, if

you regard them as important you can develop it on the redirect examination.

If your Honor please, I understood that you invited us to make informal explanations to you of our respective views of the so-called escudos transaction and that statements which I may make will not be regarded as admissions to be used by Mr. Schwartz in any way in this case. Am I correct that was your invitation, sir?

THE MASTER: I think so.

MR. WILSON: Now, Mr. Schwartz said he was going to submit a written memorandum, and I would like to inquire whether that is so or whether you are going to respond orally.

MR. SCHWARTZ: I planned that, and I was in the process of having this memorandum typed. It couldn't be done finally. And I would like permission if it is deemed appropriate to

12054 finish the typing and give it to the reporter for incorporation in the transcript. But I should like also to have the opportunity to respond to the oral exchange that we are having.

MR. WILSON: In the summer of 1943 Mr. Sturzenegger was apparently on his vacation when the Laenderbank in Berlin, apparently acting on behalf of some other concern —which turned out to be named I think Handels-und Industrie-Kontor——

THE MASTER: It's the other way around, isn't it?

MR. WILSON: No. Handels-und Industrie-Kontor.— wished to transmit moneys to Spain and Portugal for the use of a man named Consul Dimanow, who may have been a Roumanian or a Bulgarian. I don't know. I'm not sure. I don't know. Apparently for the purchase of tin.

Now, when I make that statement, that is a combination of events that I see from later correspondence and plus some things in earlier correspondence. That isn't a statement that I could compositly develop from any one letter.

The Laenderbank wanted Mr. Sturzenegger's firm to

handle the transaction without disclosing the identity of the remitter.

THE MASTER: You mean without Mr. Sturzenegger disclosing it?

MR. WILSON: Without disclosing the identity of the remitter. And by "remitter" there I mean Laenderbank.

THE MASTER: I follow you.

12055 MR. WILSON: Because Handels was never mentioned at that point. As a matter of fact, Handels was never mentioned to Mr. Sturzenegger. That develops in later correspondence.

So, a letter was transmitted through some German Government agency, written by Laenderbank to the Sturzenegger firm, and sent to the German Consul in Basle, and apparently a phone call was put in by the Consul's office to the Sturzenegger firm to have Mr. Sturzenegger or somebody pick up the letter. Mr. Sturzenegger was on vacation. The letter was not picked up at that time. It was reported back by the Consul to Berlin that the letter had not been delivered. I think the instructions came back, "Well, deliver it to some member of the Sturzengger outfit."

So, when Mr. Sturzenegger returned from his vacation it appears that he was informed of it and he stopped by the Consulate and picked up the letter.

Now, the letter in effect said: "We want you to handle the transaction for us without mentioning our name, which will involve the remittance of 1,200,000-odd Swiss francs into Madrid and of 9,800,000 escudos into Lisbon, to be placed there on your account and to be disposed of at the request and on behalf of one Consul Dimanow, who will identify himself by passport number so-and-so."

Apparently there had been a previous telephone inquiry during Mr. Sturzenegger's absence as to what his banking

12056 connections were in Madrid and in Lisbon. It appeared that he had a banking connection in Madrid

which was the Banco Aleman Transatlantico. It appeared that he had no banking connection in Portugal or in Lisbon, and it was suggested by someone that the Espirito Santo, etc., Bank should be the place at which the Sturzenegger firm should open an account. An account was so opened there in the Sturzenegger name.

The remittances came through in foreign exchange, Swiss francs and in escudos.

THE MASTER: From Laenderbank to Sturzenegger & Company?

MR. WILSON: That was the ultimate. But via, by order of and on behalf of the Reichsbank Direktorium. Now, the reason for that was that foreign exchange was involved and that always had to occur. There was nothing significant about the fact that the Reichsbank was the remitter. Nothing sinister about it in that respect. Because, Mr. Sturzenegger's firm did not have an account with the Reichsbank as did most of the Swiss banks. The Reichsbank money came into the Swiss National Bank, which was the comparable banking agency in Switzerland, and the Swiss francs there of 1,200,000 went to the credit of the Sturzenegger firm with the Swiss National Bank. The escudos went into Portugal to the credit of the Sturzenegger firm.

Then began apparently an exchange of discussions with the Sturzenegger firm obviously declining to perform the

12057 transaction, the transaction involving the deliberate omission to disclose the remitter, and therefore the disoursement of funds on behalf of an undisclosed remitter to this so-called Consul Dimanow whose identity was not otherwise known than by name.

THE MASTER: Now, I am vague on one point, Mr. Wilson, and that is: You say the escudos went to the Portuguese bank.

MR. WILSON: Yes, sir.

THE MASTER: How did they go?

MR. WILSON: By direct remittance.

THE MASTER: From where?

MR. WILSON: I take it the Reichsbank into Espirito Santo.

THE MASTER: I see.

MR. WILSON: Because I believe it was not via Sturzenegger.

THE MASTER: Or any Swiss bank?

MR. WILSON: Or any Swiss bank that I know of. There was this exchange of discussions about substitute handlings for the matter. It is claimed in a German memorandum that the Sturzenegger firm suggested a concern in Vaduz, Liechtenstein might handle the matter. It was suggested that the matter might be handled by the Swiss National Bank. I think as far as Vaduz is concerned it was suggested that a Sturzenegger guarantee should be superimposed upon that and

12058 that was not apparently forthcoming. As far as the Swiss National Bank handling the matter was concerned, they politely declined.

MR. STURZENEGGER: Swiss Bank Corporation.

MR. WILSON: What did I say? Swiss National Bank?

MR. STURZENEGGER: Yes.

MR. WILSON: Swiss Bank Corporation declined. It was then suggested the money in Lisbon might be disposed of by five blank checks of the Sturzenegger firm in equal amount. That was declined.

The upshot of these declinations was that the money, both sets of money, finally went into the Banco Aleman Transatlantico at Madrid to the credit of Laenderbank. In other words, the two objectives which were principally sought, namely, that the money should get down into Portugal and Madrid without the identity of Laenderbank being disclosed and that the Sturzenegger firm should disburse it to Dimanow as, if and when Dimanow called for it were both not carried through.

Instead of that, the money was returned to the Laenderbank. Now, it wasn't returned via the Swiss National

Bank and the Reichsbank into Berlin in the case of the francs nor was it returned from Portugal to Berlin as far as the escudos were concerned, but both sets of moneys were returned to the remitter with full disclosure of the remitter's identify at
12059 the bank in Madrid. The escudos were transferred by Sturzenegger to Madrid from Lisbon, and the francs were transferred from Basle to Madrid.

Now, in the questioning of Mr. Sturzenegger it was intimated that he carried through a transaction. Our position is he did not carry through a transaction, any transaction; that he returned the money to the remitter. And the mere fact that he returned it at Madrid instead of Berlin is a pure mechanical consequence which has no concern, because there was nothing sinister in the transfer of the Laenderbank funds back to Laenderbank any place in the world. That is an ordinary, normal banking transaction which could be indulged in by anybody.

THE MASTER: You use the phrase "he returned the money to the remitter"—singular. But there were two remitters, were there not? In respect of one remittance there was the Reichsbank.

MR. WILSON: No, but in each case our position is the Reichsbank was a superimposed intermediate remitter by reason of foreign exchange and for no other purpose.

THE MASTER: But, at any rate, both remittances were returned to Laenderbank?

MR. WILSON: Yes, which was the source of the remittances.

THE MASTER: I see.

MR. WILSON: We say that Madrid and Berlin are one and
12060 the same for the purpose of our analysis of that transaction.

Now, the things that we didn't do and the things about which Mr. Schwartz went after Mr. Sturzenegger in a most forceful fashion were whether we were willing to

handle these funds for Laenderbank without disclosing the remitter's identity and whether we were willing to make these disbursements to some Consul named Dimanow. As it turned out from the later correspondence of which we had utterly no knowledge at the time, these remittances were for the purpose of buying tin, apparently through Spain and Portugal, for a concern originally which was known as Handels-und Industrie-Kontor and which had the same address, as it turned out, as the Laenderbank and as the Zefi office of Farben, 78 Unter den Linden in Berlin.

Now, as we will unfold to you this afternoon, after Mr. Sturzenegger had washed his hands of the matter, there were still some hitches as to the remittances, and the money I think was sent back to Berlin, as I remember it. It finally started out again. And we will trace the manner in which those funds had originally been 1,200,000 Swiss francs and 9,800,000 escudos finally got into the possession of Dimanow for the purchase of tin for Handels-und Industrie-Kontor.

Now, the matter was so effectively handled by that new scheme concerning which the firm Sturzenegger had utterly nothing whatsoever to do that in the spring of 1944 it

12061 started all over again, this time to remit 20 million escudos to Consul Dimanow for the same purpose. And without giving the details of the media used for the remittances, it can be said without any qualification that the Sturzenegger firm did not touch the transaction in any way, shape or form.

Now, that is my explanation of it, sir.

MR. SCHWARTZ: Your Honor, the gist of the transaction as it appears from these exhibits and the testimony is simply that in July of 1943 Laenderbank, acting for another—Mr. Sturzenegger thought Farben, and it seems Handels-und Industrie—and, incidentally, I think Handels-und Industrie is a subsidiary of Laenderbank, which again

brings the circle back home to Mr. Sturzenegger—the subsidiary of a substantial subsidiary. Anyway, Laenderbank wrote to Sturzenegger that it was sending him roughly a million Swiss francs and a million escudos, the francs in Switzerland, the escudos in Lisbon at Banco Espirito, through the Reichsbank.

These sums were to be transferred from Switzerland and Lisbon where they would be deposited to Madrid, Banco Aleman Transatlantico to order of Consul Theodore Dimanow without mentioning Laenderbank's name. All this was done through secret channels. It appears that the letter went through foreign office courier through a branch of the German Reichsministry to the German Consulate, physically to Mr. Sturzenegger's hand at the German Consulate. The letter was

12062 marked "Streng Vertraulich,"—very confidential.

Mr. Sturzenegger was told in this letter, and this is a literally amazing fact, your Honor, by this German correspondent, "You shall not discuss this even with German friends." Even German patriots were not to be told about this.

Now, the letter was received by Mr. Sturzenegger. He went down to the Consulate. He got the letter. I will mention in a moment some of the circumstances or the lack of circumstances that he remembered as to his getting the letter.

But then to go on with the gist; there then—or even before he actually got the letter, because he didn't get it until he went down, and the telephones were open all the time, of course, he had a series of telephone conversations with a man in Berlin, the other end of this letter exchange. For reasons that do not appear—Mr. Wilson characterized it as Mr. Sturzenegger's "unwillingness," but the reasons do not appear—Mr. Sturzenegger was unable or unwilling to do what he was asked. So he helpfully suggested other alternatives. It was the escudos that apparently stuck in the throats of these people. After all, a transfer from

Switzerland to Spain was within the confines of Switzerland and presumably nosy people would not know about it. But during the war Lisbon was, of course, a center for espionage; so was Madrid.

12063 The transfer of those escudos from Lisbon to Madrid was apparently a very difficult thing. A Liechtensteinian bank was suggested by Mr. Sturzenegger as the person to make the transfer, but that didn't work. They either refused or something else happened. He suggested—in these telephone conversations—that Schweizerische Bank make the transfer. No, that didn't work too. The Director of that bank was called we saw, and he refused. And I think at one point or another Mr. Sturzenegger said, "If Director Vogelin won't do it, then I will reconsider."

Finally, either because of Mr. Sturzenegger's unwillingness or because it was mechanically or legally or espionage-wise too dangerous, the fellow in Berlin amended his request. He wrote in his memo of telephone conversation: "I requested Sturzenegger personally to remit"—I think that was the Swiss francs—"and Sturzenegger said he would."

And then later he said, "I requested Sturzenegger to remit the escudos to Laenderbank in Madrid."

Now, Mr. Wilson makes much of the fact that this was a different transaction or that it was no transaction at all. Obviously that is not so. The money came from Berlin to two places, and it was sent onward to Spain for a purpose. To suggest that this is returning money to the sender is simply to fly in the face of the facts. It was sent at the sender's amended request to the place the sender desired.

12064 Those are the facts. Two requests were made by telephone, and new letters, to remit the two separate amounts to Madrid. That was done. If there is any question as to Mr. Sturzenegger's willingness to accede to requests, certainly he acceded to those requests.

Whether these amendments robbed the situation of their elements of impropriety or adherence to the enemy is also a very doubtful question. Take, for instance, the transfer from Lisbon to Madrid. I think Mr. Wilson and the witness substantially conceded that the escudos were transferred from Lisbon to Madrid without mention to the Lisbon forwarder that that was for the order of Laenderbank. So, what resulted was that money, escudos, in Portugal, to the order of the Reichsbank, were paid to a Swiss—certainly a proper matter. Then that money was transferred to Madrid. Also nobody's business in Portugal. The Swiss banker transfers money anywhere. Then, and only then apparently, did Mr. Sturzenegger direct the Madrid bank to transfer it to Laenderbank. So the possible sources of information to the Allies of the movement of this money and its possible use were cut off at that point.

There is also the question of the interposition of the Reichsbank. Mr. Wilson states flatly that the Reichsbank was there only because it was a foreign exchange matter. Well, that's a minimization of the fact that the Reichsbank

12065 was there because this was a foreign exchange of the German Reich, whether it was owned by the German Reich in fee or merely controlled by the German Reich. It was German money, German Government money. If was to be used to buy tin. There was, of course, only one use for tin in wartime Germany—for the German machine, the German war machine.

I don't mean that Mr. Sturzenegger personally carried this tin to the German army. It develops, as a matter of fact, that Consul Dimanow, having bought the tin, was stuck with it, and the Allies several years later came down and took the tin away by contract or some such division of the spoils as extra-territorial property of Germany. But certainly he helped Berlin in forwarding its money secretly around Europe for purposes which were, of course, obvious to anyone interested.

Those are the facts. But this episode has an even greater significance for its, so to speak, layers of secrecy and removal of secrecy.

You remember, your Honor, that the SCO mentioned this transaction. We had accused—by "we" I mean the Joint Commission—had accused Mr. Sturzenegger of acting as a mail drop. At that time I may say the Allies had no knowledge of this transaction whatsoever. The accusation was based on a knowledge of the Auer transaction. And so we said "mail drop for Farben letters." The SCO apparently went all

12066 over the field of possible mail-drop activities. First on page 44 they reported on the Auer matter, and then they told us this—and it was the first thing we ever heard about this. They said: "It is asserted in this connection that Sturzenegger & Cie. served as a mailing address for I. G. Farben. Dr. Sturzenegger was questioned in detail by the clearing office and protested most emphatically"—Then they go on about Auer. He was asked about mail drop for Auer, and he said he had forwarded one or two letters for Farben.

Then the SCO goes on: "In this connection the following findings of the Clearing Office during the examination of Sturzenegger & Cie. may serve: During the war a letter was delivered to Sturzenegger by the German Consulate General in which he was informed that he would be credited with a large sum which he should transmit abroad. Sturzenegger, as the Clearing Office was able to establish from the books, returned this credit."

There is a simple paragraph. Now, after that report was written, these documents started to come in from our field office. Your Honor, it was months before we realized that these documents related to that simple paragraph. This we believe was either a deliberate effort by the SCO to give a misleading impression or it bespeaks a deliberate effort by Mr. Sturzenegger to mislead his own government, because the facts are here. We are willing to lay them side by side.

12067 and rest on anyone's judgment as to whether this is a disclosure. That implies, of course, and Mr. Sturzenegger attempted to give that impression time and time again until he saw the papers, that having received this he flatly refused it. And that was his attitude when we sat here and examined him. Certainly we had all the facts. We wanted to see whether he'd tell the truth. If he did, all of these documents would have been unnecessary. We wouldn't have quarreled over every bit of handwriting on every page. But, no, before he knew that we knew the facts, this is the kind of thing he told us:

We asked him about that—that was our text—and he remembered almost nothing.

THE MASTER: "That", referring to the section of the November SCO report? Right?

MR. SCHWARTZ: Yes, sir, that one paragraph.

THE MASTER: On page——?

MR. SCHWARTZ: Page 45, sir. We asked him about that, and he remembered very little. He said that it came through the German Consul; that it made him suspicious. And "it seemed to me obvious that it was just a concealed thing. It was concealed and hidden. It was suspicious that it came through the Consulate."

Incidentally, your Honor, our typewritten version of this will be elaborate and will give the record references on

12068 the quotes.

He refused to have any part of it. He simply returned the money. I quote him: "We decided to decline it. The sum was returned the same way. The sum was just returned. The request was not carried through. I didn't carry through the transaction. I do not recall further details. I just declined it with this impression"—that it was secret, hidden, cloaked.

I asked him: "You returned the money and wouldn't have anything to do with it?"

He said: "Yes. It amounts to that." Transcript 682.

I asked him: "You refused to take the money, or you took it only for the purpose of sending it back to Farben?"

He said, "That is my recollection."

Now, your Honor, he was, of course, repeating the impression there. He was seeking to give the impression that he had flatly rejected this out of hand; that it was improper, illegal, showed adherence to Germany. "Have nothing to do with it." He even said himself he thought it must have seemed an unfriendly act to the Germans for him to refuse the transaction.

And at one point when we were asking him about his books and what his books showed to the SCO investigators, he volunteered and he said: "If we had transferred the money to the other country, it would have shown on our books."

12069 But we pressed, your Honor, because we knew it wasn't so, and soon he began to qualify. Then repeatedly he kept saying he didn't carry the transaction through as requested. And he had a dozen variations of that: "As requested"; "as it was requested."

I kept pressing on that "as requested." It was obvious there was a qualification there. What had he done not quite "as requested"? The question was: Was he going to be frank? No, but he wasn't.

I asked him: "Can you state definitely and without qualification that you did not execute this transaction?"

He said: "I did not execute the transaction requested." Still a qualification.

I said: "Did you execute it partly and not wholly?"

He said: "No. We transferred back—I do not recollect the details—the money." Still that "we transferred back the money."

I then try to sum it up and say: "Can you state definitely without qualification that you did not execute any part of the transaction requested?"

Then Mr. Wilson said: "The question has been answered. I direct you not to answer."

Now, all this was, of course, before he saw any of the exhibits. And before he saw any of the exhibits, as I said, he remembered extraordinarily small amounts of this trans-

12070 action. All he could guess was that it was in 1942 or 1943; that it involved a million Swiss francs. He evidently didn't remember at all any escudos. He thought it was from Farben. He thought it involved Spain or Portugal.

In discussing the SCO he said: "Their investigators were able to satisfy themselves that we retransferred the amounts credited to us to the party who had caused the transfer I think."

Later on, incidentally, he said: "The SCO investigators were satisfied that the money was transferred back in some way."

But he was pretty clear or relatively clear on the circumstances of his receipt of the letter. He said pretty clearly he didn't think it came by mail but rather by hand or that someone came by or that he was called to pick it up. He never followed up the suggestion that it was delivered to him by hand. At first he said he didn't remember whether he got the letter from the Consulate or he sent someone for it. But almost simultaneously he said that it was he who went to the Consulate to pick up the letter.

He reasoned it out this way. He said: "Only one such letter ever came during the war from the Consulate"; that he was at the Consulate only once during the war so he was pretty sure that it was he who picked up the letter.

But we asked him about this visit to the German Consulate

12071 and there he was a complete blank. He couldn't remember what the place looked like on the inside, how long he was there, whether he had to wait, with whom he talked. I asked him whether it was a man, a woman, a servant, a servant in livery, a man in uniform. He didn't remember a thing. He was sure, however, that it was

not the Consul, the Consul General, von Haeften. He was certain he had not seen him. Nor could he remember anything about the letter as a physical thing, whether it was in an envelope handed to him—seals—ribbons. He couldn't remember a thing.

Then, your Honor, we started introducing the exhibits. The first two exhibits, 2 and 3, had to do with the courier post. Then came the Exhibit 4 which was the basic letter, that of July 19th. I have already mentioned it. When he saw this letter he said in answer to a question about this transaction, that no, he hadn't said he didn't execute this transaction but rather he didn't execute it as it was requested. And I said, "Well, do you mean that you executed part of it?"

He said no, that wasn't correct either; that he meant that he hadn't executed it the way it was requested. He had transferred the money back but he wasn't sure of the way. It was up to his bookkeeper how it went.

I asked him whether in his earlier testimony he had had in mind that he was misleading me, not telling me everything.

12072 He said no, he hadn't thought that he had done something other than send the money right back to the sender in the same way it came. He had known nothing at the time of those earlier statements—only that it was transferred back, and how it was transferred back he couldn't recollect. He was sure he didn't carry through the transaction, but what he did he couldn't remember.

Now, your Honor, that's bad enough, but for the witness to sit there after seeing this first letter that came from the Consulate and say he couldn't remember how the money went back, I submit that is incredible to the point of deliberate misstatement. He couldn't remember all this business of trying to get another Swiss bank, of trying to get a Liechtensteinian bank, Banco Espirito, Banco Aleman. He couldn't remember that it went back via Spain.

They protest now very loudly that they refused to have

anything to do with it if it was to go to the credit of Dimanow. He did send it to Laenderbank in Madrid. He couldn't remember a thing about it when he sat here.

We suggest the reason he couldn't remember a thing about it was that he thought that we did not have the correspondence on how it actually went. That's been the pattern throughout, your Honor. So long as it appears that we cannot prove something, Mr. Sturzenegger does not remember it. When we prove it, he may identify the signatures and still he has

12073 no independent recollection. You have seen that time and time again, your Honor. He even invites me to prove it to him with a signed document. When I state that I haven't got a signed document, then he's confirmed in his readiness not to remember.

He was truthful when he said he didn't execute this transaction as requested—as it was in the July 19th letter. But was he truthful, your Honor, when he said that he didn't execute the transaction? When he said that he returned it, retransferred it, sent it back to the sender? He sent this money to another country on request of Laenderbank. Was he truthful when he said he didn't do that? Was he truthful when he said he didn't remember how he sent it back?

There are other instances of what we submit were deliberate, wilful refusals to remember. He testified, your Honor, that he couldn't remember any correspondence on this subject. He couldn't remember whether he had sent Laenderbank any letters on the subject. Now, we had four letters or telegrams from Sturzenegger to Laenderbank, one acknowledging receipt of the Swiss francs, one acknowledging receipt of the escudos, one saying, "We acknowledge your orders to send you the Swiss francs at Madrid," and one saying, "We acknowledge your orders to send you the escudos at Madrid." Those are the facts. Yet he couldn't remember any letter.

When we get to the subject of telephone calls, there it

12074 is simply fantastic, your Honor. He couldn't remember not even one telephone conversation with anybody on this subject, not even one telephone conversation with anybody at the other end of the wire in Berlin. We produced five memoranda of telephone conversations with him and Mr. Moser of Laenderbank, every one of them signed by Mr. Moser. Mr. Sturzenegger identified the signatures as those of Moser or Mahr, both of them people in Laenderbank. Those are Exhibits 11 to 15, your Honor. They ranged over a period of a month. Four of the five memos have to do with conversations with Mr. Sturzenegger, Hans Sturzenegger. In one of them there are two conversations on the same day.

Your Honor, they were burning the wires. They had to get those escudos to Madrid. And Sturzenegger called in the morning and said, "How is it going? Can you get them from Schweizerische Bankverein?" He called at noon and said, "If you can't do it that way I'll do it another way."

Five telephone conversations with Mr. Sturzenegger and Mr. Moser—the result of this super-secret espionage affair—and he sat here and he couldn't remember one telephone conversation. And when we showed him the memos of telephone conversations, he said: "I'm convinced they took place. I see the signatures. I won't deny the signatures. But I still don't remember them."

Until he saw the documents—again an incredible

12075 point—he had no memory of nine million escudos. Now, to think of this only in terms of a million Swiss francs when the difficult part of the transaction had been the escudos,—the Swiss francs went in and out, and it was very easy for a Swiss banker to transfer Swiss francs for the Germans, but escudos meant somebody else would have to learn about it, and God forbid the Allies would learn about it. And that was what stuck in his craw.

That was the thing that gave him trouble. And yet he sat here and didn't remember anything about escudos.

Then we came to some minor points. We asked him what "deutsche Freunde" meant—that he was not to discuss the matter even with German friends. Now, anybody who has even been alive in the last several years knows what that means. It means: Don't discuss it with friends of Germany, German patriots. And he had the belief and naivete sufficient to let him suggest that it meant friends of German citizenship. And he himself admitted that was absurd because if he wasn't to discuss it with his friends of German citizenship it meant he could discuss it with his friends of Swiss citizenship.

Then we came to the Reichsbank. Mr. Wilson says the Reichsbank is only the mechanical purveyor or conveyor of foreign exchange. We didn't know but that this was German Government money, and we still think it was German Government money. So we asked Mr. Sturzenegger about the Reichsbank,

12076 and you would think that he had lived on a tropical island for all he knew about the Reichsbank. For 20 years he had been banker for I. G. Farben. He studied law in Germany. He was his firm's expert on foreign exchange. He hardly even knew that there was a connection between the Reichsbank and the German Government.

Then the climax, your Honor, literally the out-of-this-world climax, was the matter of the Japanmarks. The last of these telephone conversations brought up Mr. Ruhl and the Japanmarks. Your Honor has already seen what Mr. Sturzenegger was willing to testify to on the Japanmarks when he thought we knew nothing about them and what he was compelled to admit when we got the proof from Japan.

In a sense, your Honor, this transaction with the German Consul and the Japanese material provide a theme that runs through this entire deposition physically as well. When we knew nothing about it, Mr. Sturzenegger knew nothing about it. When we opened it up with the memo on

Japanmarks from Mr. Ruhl, all he remembered was that there was a Mr. Ruhl somewhere in the world. Then the material came in from Japan and he had to remember a good deal more.

The same thing, we believe, has been happening with every shred of evidence we have.

Your Honor, in Germany we found only so much documentary material, a certain amount. We have every reason to think

12077 that there was infinitely more. The I. G. Farben files were picked up and taken by various people in various directions naturally. The most confidential files were probably burned long before the second front. As the Allies came closer to Berlin more and more were thrown away, burned, pocketed, buried. A certain number, incidentally, we found buried in the back yard of Von Knieriem. How much more there was that would implicate these Swiss cloakers we will never know. But this we can be sure of: Now that plaintiff knows what we know, they will clearly and most certainly deny everything else.

Judge Laws said in granting them inspection of our papers that it would avoid perjury. How right he was, your Honor. It avoided monumental perjury, and it permitted them to lie only as to the material they knew we did not have.

MR. WILSON: If your Honor please,——

THE MASTER: Just a minute, Mr. Wilson.

Let the record show that the statement of Mr. Schwartz is made under the same conditions and with the same effect as Mr. Wilson's statement.

Did you wish to say something, Mr. Wilson?

MR. WILSON: I would like to make some reply.

I think this is a golden opportunity to be able to observe the manner in which Mr. Schwartz, with his burning

12078 zeal, translates evidence. Time and time again when we have appeared in court it has been impossible in the limited time, with limited facilities, for me to attack adequately short phrases picked out of context which Mr.

Schwartz has uttered or written for the purpose of striking down my client. But here is a time when you have had the opportunity to sit here and to hear Mr. Schwartz and to see Mr. Schwartz as he uttered this argument with respect to this point.

Not only may you do that, sir, but you will be able to pick up the testimony at the places which have been indexed for you, and you will be able to see these documents, which so far no judge has been able to do, to check upon the correctness of the conclusions which Mr. Schwartz has from time to time drawn. And this time you will be able to determine for yourself what I submit is the utter unreasonableness, the intemperateness, the exaggeration, to say nothing of the unfairness of the conclusions which Mr. Schwartz has drawn from this set of facts and the epithets and the side remarks and the waving of the flag and otherwise his manner to embellish and garnish his argument.

Now, Mr. Schwartz used a portion of knowledge which he had for the purpose of trying to trap Mr. Sturzenegger, who was here without his records, whose memory was being called upon to remember a transaction six years old, the mechanics of which transaction were undoubtedly handled by members of
12079 his staff. And I say that you cannot reach any other conclusion when you see all of this correspondence and all of the questioning of Mr. Schwartz than the one that this is one of the lowest efforts to trap a witness about an old event that I have ever been able to observe in the many years of my practice of law and trial of cases.

There is nothing wrong with the transaction as Mr. Sturzenegger executed it. And when he answered, as Mr. Schwartz quoted him on one occasion, "Yes, it amounts to that," that's just what it amounts to.

Now, with the transaction laid bare, if Mr. Sturzenegger's memory had been completely clear about the transaction, there wouldn't have been the slightest thing to be ashamed of to have admitted every detail of it right off in

answer to the first question, had he been capable of remembering those details or if he had ever known them.

Now, Mr. Schwartz, with an ingenuity which is native and with a zeal to turn the facts of this case to his own benefit, pitches his whole argument to you here upon one slight theme, and that slight theme is that it was difficult to transfer escudos from Lisbon to Madrid and that Sturzenegger performed that service and that thereby he was helping to carry the moneys of Germany around Europe. There isn't a word of truth in that claim. There wasn't anything at all difficult about transferring funds from

12080 Lisbon to Madrid. And the rest of these papers will show you that funds were transferred from time to time from Lisbon to Madrid. And anybody could have done it and did do it. And the Sturzenegger firm rendered no particular service that any other banking house could not have rendered ordinarily in making that transfer. And Mr. Schwartz would make a distinction between Swiss francs which he says can be easily handled by a Swiss in Switzerland and the transfer of escudos which had to be transferred from Lisbon and which therefore involved an implication in matters of espionage and that sort of thing.

He starts out with the premise which he concedes that both Spain and Portugal were hotbeds for espionage, yet he strikes down the transaction of transferring the escudos from Lisbon to Madrid but he doesn't strike down the transaction of transferring the Swiss francs to Madrid.

I say that Mr. Schwartz has built up the most colossal straw man here of which the human brain is capable to conceive and has then gone to work to strike it down and to wound it and to amputate it and to decapitate it and otherwise to assail this imaginary idea which he has created for the purpose of covering up. I submit, his own improper practices in trying to trap this witness with about one tenth of the truth.

Now, he criticizes Mr. Sturzenegger's answers generally, and he turns to your Honor and he says to your Honor; You
12081 have seen it yourself since you have been sitting here."

I want to say that I am not ashamed of any piece of conduct by Mr. Sturzenegger on the stand, and I am not ashamed of anything which you have been able to observe here, and I ask if in your long experience you have ever seen a more cooperative witness, a witness who was more willing to take abuse and to have his memory pummeled by questions involving transactions that happened 15 and 20 years ago and has sat there politely, far more politely than I would ever have sat there, and been questioned about things and when he didn't remember them be subjected to the insinuations that he must be lying.

I say this proceeding has been a field day for the Department of Justice, and I am ashamed of it.

THE MASTER: Mr. Wilson, I would like to ask you a question. Who was the remitter of record of the escudos from Berlin to Portugal?

MR. WILSON: I guess the Reichsbank. Is my recollection correct on that?

MR. SCHWARTZ: I think that's right.

THE MASTER: That's what I understood. And when they got to Portugal they were to be sent to Madrid as coming from Laenderbank?

MR. WILSON: No. In the original transaction they weren't to leave Portugal. They were to go to Sturzenegger's
12082 credit in Portugal and to be disbursed on the request of Dimanow who would exhibit his passport.

THE MASTER: And Laenderbank was not to be in the transaction at that original stage?

MR. WILSON: Yes, sir. Now, it's true I believe that when the transfer of escudos was made by Sturzenegger to Madrid that he didn't tell the Lisbon bank that it was for Laenderbank at Banco Aleman Transatlantico in Madrid.

The fact of the matter is—and I think Mr. Sturzenegger so testified to it, and if he didn't he's ready to testify—that that was the entirely normal way to handle the transaction. Sturzenegger was the customer at that point who directed the remittance into Madrid. And there was nothing sinister. There was nothing underhanded. There was nothing other than the most normal course of events for the remittance to have been made in that manner. And, of course, by the time the remittance got to Madrid, Banco Aleman Transatlantico was told by Sturzenegger, "Put it to the credit of Deutsche Laenderbank." And it happens this way in this country every day, just that way. I represent a bank, and I know that that's the way such things occur.

Now, as far as the SCO report is concerned, I would say that it can be dealt with just about the same as I dealt with the phrase that Mr. Sturzenegger made, "Yes, it amounts to that." These details, these mechanical details, are only

12083 important because Mr. Schwartz in the manufacture of this straw man makes them important. The important factors here—and Mr. Schwartz cannot minimize these at all—are first that Laenderbank's identity was to be concealed and secondly that after this concealment Sturzenegger was expected to make disbursement of this large fund to some foreign consul in a foreign country. He did not do those things. Therefore, he did not carry out the transaction. He returned the money to Laenderbank. And if the mechanical details were not remembered by Mr. Sturzenegger and were not outlined, that's wholly beside the point.

We're grown men here. We are not to be quibbling over these little unimportant details. And we find that Mr. Schwartz, when he wants to make a detail important that is unimportant, manufactures some kind of an imaginary event. And I say and I think it is the test of this whole proposition, don't forget when you come to read these pa-

pers, wherein was it difficult to transfer escudos from Lisbon to Madrid? And you won't find it was. And yet he makes that as the crux of his position in this case. He starts out his talk by referring to the fact that Handels- und Industrie Kontor was some kind of a subsidiary of Laenderbank. I don't know whether it is or whether it isn't. They have got the same address. A woman named Polley seems to have signed one or two letters for Handels, and she signed some letters for

12084 Laenderbank. She was known to Mr. Sturzenegger from an early acquaintance, as I understand it.

I think Mr. Sturzenegger's testimony will undoubtedly be he never heard of Handels-und Industrie Kontor before he read it in the documents which I got from the Department of Justice. He doesn't know to this day whether or not it is a subsidiary of Laenderbank or a subsidiary of Farben or what it may be.

But Mr. Schwartz starts out his argument to prejudice our position by reminding your Honor that we owned 64 per cent of the stock of Laenderbank and therefore in some way, vicariously or otherwise, we are going to be responsible for whatever subsidiaries, if they were, that Laenderbank had.

I say there is no justification for that conclusion in this situation.

The speech of Mr. Schwartz is largely concluded with a reference to the Japanmarks.

12085 I sat here on the last day before recess of this deposition and tolerated a kind of examination that I have never tolerated without objection before in my life, with respect to the so-called Japanmarks transaction. Mr. Schwartz is claiming that Mr. Sturzenegger has knowledge about Japanmarks, that some transaction or transactions were handled for Ruhl, and that for some reason he is concealing what he knows about that or other dealings in Japanmarks.

Now, I have heard enough about Japanmarks in this case, and I have heard enough about insinuations that Mr. Sturzenegger is a monumental liar with respect to Japanmarks. We are going to undertake to show how insignificant the Ruhl transaction is in this matter, and we are going to undertake to show a complete lack of knowledge by Mr. Sturzenegger of dealings in Japanmarks, a matter that Mr. Schwartz will not believe is true, but which we hope to establish.

I think that is all I want to say.

THE MASTER: I want to ask one question, Mr. Wilson. I was interested in your remark a little while ago to the effect that one of the essential features of the transaction was to be concealing the contact of Laenderbank. Do you recall that statement?

MR. WILSON: Yes.

12086 THE MASTER: And yet it appears that the Reichsbank was of record the remitter of the escudos. Now, from the viewpoint of adverse inferences, the Reichsbank would be, would it not, a source equally as bad, to say the least, as the Laenderbank?

MR. WILSON: I think there are two answers to that, your Honor, I would say two clear answers. One clear answer is that Deutsche Laenderbank, a German bank, with knowledge that the Reichsbank as an intermediary remitter would be well known to the Lisbon bank, nevertheless prescribed that the one issue be handled without the disclosure of Deutsche Laenderbank.

Now, Deutsche Laenderbank must have had some particular interest in concealing its own identity. That cannot be gainsaid. On the other hand, if my statement is correct, sir, that the Reichsbank is a medium for the transmittal of foreign exchange out of Germany, then it is largely impersonal and mechanical in the transmittal of such foreign exchange and carries no implications of any character in connection with it.

THE MASTER: Well, that would be true, but it would seem

to me hardly reasonable that the Reichsbank would transmit foreign exchange to Portugal as a routine matter for various German nationals without a tag indicating for what national it was making the transmission. I suppose it made such remittances for German nationals on occasion, and possibly other remittances in its sovereign capacity, I don't know.

MR. WILSON: You must remember this—and we Americans

12087 lose sight of it from time to time. Portugal and Spain were not at war with Germany. Therefore, these state banks, these state national banks, might make remittances back and forth without any question.

But I want to say to you, rather rhetorically, what does your inquiry prove? The remittance went into Lisbon from the Reichsbank with the disclosure, let's say, of the Rejchsbank. Now then, what did Mr. Sturzenegger do that was improper or sinister in connection with that?

Of course, you see, to make that sting, Mr. Schwartz has to say that it is difficult to get escudos from Lisbon to Madrid, but he can't prove it.

The Master: Well, my question, Mr. Wilson, was prompted only by my curiosity as to why the Laenderbank as a source would be concealed, when the Reichsbank, equally bad as a source, was frankly admitted. It is a puzzle.

MR. SCHWARTZ: May I suggest this, your Honor. Looking at the transaction as it ended, the money is now gathered in Spain with, however, a Swiss origin. This was to be used for tin. They hoped to bring that tin into Germany. They naturally, I should think—I think I know—they naturally did not want the Allies to know that tin and a certain quantity was being bought for Germany.

Now, the Allies could learn that, of course, by following the tin physically, but that, of course, involves literal

12088 espionage, tracking. A much better way to learn that is: Whose money is buying the tin? There is

the clue. Now, if it is money from a Swiss source, that is one thing. If it is money from a German source, that is another.

True, the Reichsbank was known in Lisbon as the remitter of money, but not in Madrid. Sturzenegger cleansed the thing of German influence before it got to Madrid. When the moneys reached Madrid, they were all Reichsbank money for tin to be bought for Germany, but it was money put up by a Swiss bank, and therefore Laenderbank, Dimanow, and all the tin people could well think the tin was being bought for the Swiss principal. Their suspicions might be aroused by the fact that it might be Laenderbank, but after all, Laenderbank is and was presumably known to have been a subsidiary of Sturzenegger, so it was tin, perhaps, for the Swiss industrial machine, a far different matter from a certain number of tons for the Germans.

THE MASTER: Well, let's take a recess for five minutes.

MR. WILSON: I just want to say something, and it won't take me but a moment.

THE MASTER: Yes, go ahead, Mr. Wilson.

MR. WILSON: The transfer of the escudos from Lisbon to Madrid was not a part of the original design. Mr. Schwartz placed emphasis on it. The original design was to leave the escudos in Lisbon and to pay them out to Dimanow, and it was

12089 only because of Sturzenegger's resistance that the second move took place. Therefore, you can't put the sinister connotation on it which Mr. Schwartz puts on it.

Now, in your effort, your Honor, to analyze why Laenderbank wanted to be concealed, I think we must be realistic about it. I think we must indulge in a kind of example of human nature, and that is this: You may have a purpose not to disclose, which I think is unimportant. I may have a purpose to conceal something, which you think is unimportant. Therefore, the weight which must be given to the

desire to conceal is the weight which is in the mind of the man who wants to conceal, and Laenderbank prescribed in this case that its name should not be disclosed. It had a purpose that you must accept, and the purpose was not achieved, and that is the most important part of this whole transaction. And I say to you that it must not be confused.

This ingenuous idea that the remittance from Lisbon to Madrid is somehow the high water mark in this allegedly dirty scheme is the most patent distortion of a simple proposition that I have ever seen.

Thank you.

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12090 MR. WILSON: * * *

With respect to Defendants' Exhibit 15-19781, which purports to be a German memorandum dated Berlin, September 14, 1943, we disagree with one word in the translation.

THE MASTER: Has that got an exhibit number in this case, Mr. Wilson?

MR. WILSON: Yes, Defendants' Exhibit 15-19781.

THE MASTER: Oh, 15.

MR. WILSON: That is the Defendants', Government's, 15-19781.

MR. SCHWARTZ: That is the Japanmarks—Mr. Ruhl memorandum.

MR. WILSON: The second paragraph of it is that, sir.

The first paragraph in German, the word "Stand" has been translated as "progress." I don't know that it is particularly material—I think Mr. Schwartz attempted to indicate that this inquiry of Mr. Sturzenegger was an anxious one, interested in the outcome of the transaction. I think we would translate the word "Stand" to mean "status," not "progress."

THE MASTER: Not what?

MR. WILSON: Not "progress." You see, the second sentence of the first paragraph, "inquiry about the prog-

ress." According to the lines of Mr. Schwartz' argument to you that the lines were hot between Berlin and Basle and Mr. Sturzenegger was anxious to do what he could in that sort of thing—I remember that was Mr. Schwartz' theory about it.

* * * * *

12091 By Mr. Wilson:

Q. Mr. Sturzenegger, did your bank have an account with the Reichsbank in Germany? A. No, it had not.

Q. And do you know from your banking experience whether most of the Swiss banks did have accounts with the Reichsbank? A. Well, I mean of course the Swiss National Bank had, but I am convinced that the big Swiss banks had, too.

Q. Now, if you had had an account with the Reichsbank, then a remittance by and on behalf of the Reichsbank could have gone directly to your credit in that account, could it not? A. Sure, that would have been the normal way then.

Q. Now, in the absence of such an account, what was the normal banking manner of making such a remittance? A. The normal way was that the Reichsbank credited—asked—let me correct it—one or the other Swiss bank where the Reichsbank had an account to transmit such amount to our bank, debiting the Reichsbank on the other hand.

Q. Did it necessarily have to be the Swiss National Bank?

12092 A. No, not at all. It could have been the Swiss Bank Corporation or any other Swiss bank where the Reichsbank had an account.

Q. In other words, I may have misspoken myself in my argument. It is not merely a matter of remittances between two state banks? A. No.

Q. It is simply a remittance to a foreign bank which carries an account for the remitter? A. Yes.

Q. Is that correct, sir? A. Yes.

Q. And that would mean, then, that whether or not the Espirito Santo and so forth at Lisbon is a state bank or the state bank of Portugal is beside the question? A. That I do not know.

MR. SCHWARTZ: I object.

BY MR. WILSON:

Q. Do you know?

MR. SCHWARTZ: May I speak to that?

THE MASTER: Yes, go ahead.

MR. SCHWARTZ: I have listened to one leading question after another. They didn't seem to be terribly important, but now it is opinion and it is much more than leading. I would like to raise the point I raised the other day about

12093 leading questions.

This is Mr. Wilson's testimony and opinion and conclusion, and it demonstrates fully the evil that I believe is to be found in leading and permitting leading questions by plaintiff's counsel of plaintiff's officer in this situation. As I stated to your Honor the other morning, we had searched the authorities and we found that they were almost literally non-existent. We did find—and I have them with me now—ample authority for the proposition that leading questions are designed—it is their function in the law—to permit the truth to be exposed when the witness is hostile to the examiner. That is almost too elementary.

Certainly, if Mr. Wilson on trial of this case were to call Mr. Sturzenegger as a witness, he could not lead him for the simple reason that Mr. Sturzenegger is already sympathetic to Mr. Wilson's point of view. Now, we called Mr. Sturzenegger. We do not make him our witness. It is understood, it is the law, that on a deposition you do not make the adverse party's man your witness. He is by definition a hostile witness.

Rule 43(b) first states the simple principle that a party may interrogate any unwilling or hostile witness by leading questions. Then it goes on to say—and, if your Honor remembers, these were innovations in federal practice to a certain extent:

"A party may call an adverse party or an officer, director,
12094 or managing agent of a corporation which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party."

I would like to pause there for a minute and sum that up. We may call Mr. Sturzenegger and treat him as a wholly hostile adverse witness. We may contradict and impeach him. We may lead him.

Then the rule goes on, and I quote again:

"And the witness thus called may be contradicted and impeached by or on behalf of the adverse party also."

Notice the significance. We may call Mr. Sturzenegger and lead and contradict. The adverse party, however, the plaintiff, it is said, shall merely be able to contradict and impeach him. It doesn't say "may lead him." There is a complete omission.

MR. WILSON: What rule is that?

MR. SCHWARTZ: Rule 43(b), sir.

MR. WILSON: That is the trial rule.

MR. SCHWARTZ: Of course, it must be analogized to the deposition, but I don't know why it is any different on the deposition for the principle it states.

THE MASTER: Well, the deposition rule, Rule 26, I think, incorporates by reference Rule 43, does it not?

MR. SCHWARTZ: That's right, "The examination shall be
12095 conducted in the manner prescribed in 42(b)." That's right. I had forgotten that.

I would like just to cite for the record these two or three references, and I will mention them briefly:

3(a) Ohlinger's Federal Practice, 1948, pages 86-87, page 88.

3 Moore's Federal Practice, 1938, pages 3074-75.

3 Wigmore, Third Edition, 1940, Section 773, pages 130-131.

6 Wigmore, Third Edition, 1940, Section 1887, pages 538-539.

3 Jones on Evidence, Fourth Edition, 1938, page 824.

Dyer-Smith, Federal Examinations Before Trial, 1939, Section 496, pages 347-8, and Section 497.

Your Honor, all of these authorities mention leading questions or discuss Rule 43(b). They give various facets of the problem that we have here.

Rule 43(b) is characterized by Ohlinger as containing the innovation that the present subdivision changes the formal practices as to cross-examination, leading questions, contradiction, and impeachment, in that it now permits a party to call an adverse party or officer and lead and contradict him in all respects as if he had been called by the adverse party. Thus, our position vis-a-vis Mr. Sturzenegger is as if Mr. Wilson had called him, because he is the adverse party.

I showed your Honor that in the discussion of how Mr.

12096 Wilson may treat his witness, he is permitted only to contradict and impeach his man, and lest it be thought that that makes the witness, so to speak, hostile to Mr. Wilson as well, I would like to point out that it doesn't. That is a special privilege. Mr. Wilson is permitted to contradict and impeach Mr. Sturzenegger only if Mr. Sturzenegger goes over to the other side. That is, the rule is completely silent in giving Mr. Wilson permission to lead Mr. Sturzenegger. It gives him permission to contradict and impeach Mr. Sturzenegger, but Moore points out that the permission to contradict and impeach

is designed in case the witness deserts, surprise, so to speak. So if that is correct—and of course Moore is standard and good authority—not even a vestige of character as a hostile witness is left with Mr. Sturzenegger for this purpose.

Now, Wigmore in talking of leading your opponent's witness under cross-examination, makes, of course, the solid analysis that is typical of that text. He says, at the point I cited:

"The typical situation in which the witness' presumable bias removes all danger of improper suggestion is that of an opponent's witness under cross-examination. The purpose of the cross-examination is to sift his testimony and weaken its force, in short, to discredit the direct testimony. Thus, not only the presumable bias of the witness for the opponent's cause, but also his sense of reluctance to become the instrument

12097 of his own discrediting, deprive him of any inclination to accept the cross examiner's suggestions unless the truth forces him to. Accordingly, it is well settled that on cross-examination of an opponent's witness, ordinarily no question can be improper as leading."

Now, that is the theory, good, solid, jurisprudence, underlying cross-examination. It is not directly relevant. Wigmore's exception, though, is relevant. He goes on and says as follows:

"Yes, where the reason ceases, the rule ceases also."

He is referring to the rule of saying you can always lead your opponent's man. I quote again:

"Thus, when an opponent's witness proves to be in fact biased in favor of the cross-examiner, the danger of leading questions arises and they may be forbidden."

That doesn't speak of depositions, but I would like to apply that principle. If we think for a moment that Mr.

Sturzenegger is our witness because we examined him on direct, from Mr. Wilson's point of view he is an opponent's witness, but he may not cross-examine Mr. Sturzenegger even on that theory if the witness is biased in favor of Mr. Wilson. Really, to cap bias in favor of the examiner with permission to lead makes the testimony Mr. Wilson's testimony.

We heard it a moment ago. Mr. Sturzenegger, with his natural confidence in his counsel, would agree to anything
12098 Mr. Wilson wanted to put in his mouth. It is bad enough, or it is the fact, it is the realistic fact, that Mr. Sturzenegger's testimony is designed to be self-serving, but that his testimony be phrased for him by his own counsel—that is beyond the bounds of permissibility. These other authorities show it equally well.

Wigmore in the next point says:

"If the witness is hostile to the original calling party, the opponent"—we are the original calling party and Mr. Wilson is the opponent—"should not and could not ask leading questions any the more on this cross-examination than on a direct examination at a later stage."

There is the principle I mentioned before. If Mr. Wilson calls Mr. Sturzenegger on trial, of course, he won't be able to lead him. Why then should he be able to lead him now?

Lastly, Jones on Evidence says very simply:

"While leading question may be asked on cross-examination, the rule is subject to the qualification that the court in its discretion may restrict the right where the witness shows a bias in favor of the cross-examiner."

Now, your Honor, it will not be stretching this situation a whit more than necessary if you were to rule that Mr. Sturzenegger is, of course, biased in favor of Mr. Wilson's position; therefore, Mr. Wilson should be held in your dis-

~~exception to the principle that he would be held to if he~~
were
12099 examining Mr. Sturzenegger as his own witness.

MR. WILSON: If your Honor please, the parallel which I am about to draw is not decisive of my position, but it is indicative of a principle which is involved here.

Let us assume that instead of Mr. Schwartz having taken the discovery deposition of Mr. Sturzenegger, he had found it necessary to take Mr. Sturzenegger's deposition under 26, which is both discovery and perpetuation, for perpetuation purposes on a certain point. I gather from his reading of these interesting side remarks of Professor Wigmore and others that I couldn't lead Mr. Sturzenegger in my cross-examination under those circumstances.

Would you care to either say that I have divined your thinking accurately or not, sir?

MR. SCHWARTZ: I am really not sure, because I understood that we did take Mr. Sturzenegger's deposition under 26.

MR. WILSON: But for discovery.

MR. SCHWARTZ: It serves for both perpetuation and discovery.

MR. WILSON: Let's take a pure case of perpetuation, like Messrs. Merton and Euler.

MR. SCHWARTZ: But Mr. Merton wasn't your officer.

MR. WILSON: I am not paralleling it. I am saying: Suppose you were taking a pure perpetuation deposition of Mr. Sturzenegger because on some very vital point he is
the
12100 only source of information for you.

MR. SCHWARTZ: Let's have it that we called him as our witness on trial.

MR. WILSON: Now, could I lead him on cross-examination?

MR. SCHWARTZ: All these principles, Mr. Wilson, were written with trial in mind. They say that because of bias that an adverse witness would have to us, and in your favor, you could not.

MR. WILSON: I can't lead him?

MR. SCHWARTZ: Right.

MR. WILSON: I see.

MR. SCHWARTZ: Or that you shouldn't if the court finds that he is biased in your favor.

MR. WILSON: I will pitch my whole position on that answer, sir. I won't argue any further.

THE MASTER: Let me ask a question, will you. What is your view, both of you, as to whether, irrespective of the status of the witness, as to whether he is hostile, biased, or just an ordinary plain, garden variety witness—what is your view as to the right to lead him in a discovery deposition as distinguished from a trial of a case?

MR. SCHWARTZ: That answers itself, sir, because pure discovery is—if you were a third person and we desired discovery and Mr. Wilson desired discovery and none of the testimony were to be introduced on trial, pure discovery, it

12101 wouldn't matter a whit what anybody said. It is just not good discovery to lead a witness and say, "Isn't it so that the body is buried under the rug?" He says, "Yes," but that doesn't teach you very much. If it is pure discovery, it doesn't matter a bit. The vice is that answers to leading questions may then be introduced on trial.

Look what happened, your Honor. We called Mr. Sturzenegger, asked him everything that we could think of. Comes the trial he is more than a hundred miles away and Mr. Wilson prefers not to call him. We can't call him because we can't subpoena him. We may not even care to call him because we have the transcript. Then we put in all the testimony on direct. Comes now Mr. Wilson and puts in a tremendous number of answers to leading questions. In other words, he can dispense with calling Mr. Sturzenegger. He can avoid the rule that if he calls Mr. Sturzenegger he may not lead him, and simply puts in a lot of, "Yes," "Yes," "Yes," to Mr. Wilson's idea of the evidence.

Mr. Wilson doesn't need discovery from the witness. He can talk with him outside the room. He wants testimony to put in and he should not be permitted to have testimony if he is going to lead him. That is not testimony. That is counsel's view.

MR. WILSON: Now, may I answer your question?

THE MASTER: Yes, Mr. Wilson.

MR. WILSON: As far as discovery is concerned, of course

12102 leading questions can be asked on both sides. There is no question.

THE MASTER: That leads me to ask this question: You would have the right then, do you feel, Mr. Wilson, of yourself calling Mr. Sturzenegger as a witness if you so desired on discovery? What I am thinking of is this: Many attorneys, as you know, pay very little attention to cross examining a witness on discovery, relying upon the fact that they are going to call the witness at the trial. Now, my question is this: Granted, for the sake of argument, that you have the right to examine a witness on discovery by leading questions, what is there to prevent you calling Mr. Sturzenegger as a witness and examining him by leading questions on direct if you so desire?

MR. WILSON: Well, I think that your question as to whether you can have a discovery deposition of your own witness is more academic than it is real, if I may say so respectfully, because it isn't involved in this situation. I am cross examining the witness about points that have been raised on the direct questioning of Mr. Schwartz. Now, nobody knows better than I do that in 99 per cent of the discovery depositions that I have indulged in, where it has been my witness on the stand, at the end of the direct examination I have picked up my books and gone home. But in this situation I am going to vary that procedure to a certain extent.

12103 I am dealing here with a man who is flying back and forth across the Atlantic. There may be cer-

tain denials or certain explanations which I want to get in this record and which relate to the direct examination. That is the reason I say—and I meant it very respectfully—that your question about whether I could call him as my witness and open up a discovery proceeding with him is an academic question. It doesn't apply here. I am not opening up new questions. I am going over a field that Mr. Schwartz has opened up.

And I haven't the slightest doubt about my ability to lead this witness. I can recall instances in my own experience with you where in the prosecution of crimes when I was in the District Attorney's office, I had to call an officer of your client to the stand as a witness, a person who undoubtedly you had interviewed the night before, and very properly, and yet when I turned her over to you for cross examination I couldn't block the leading questions that you were asking, under any theory of good old Professor Wigmore or anybody else who sits in his office writing a lot of theories about the trial of cases that I know never apply.

THE MASTER: Well, my question, Mr. Wilson, was not asked you from the viewpoint that you imagined. It was asked from this viewpoint, that if you have the power to call Mr. Sturzenegger as a witness on direct and can ask him leading questions, it is hard to see how any prejudice can arise from your

12104 asking him leading questions on cross.

MR. WILSON: I realized that; that was easy.

MR. SCHWARTZ: Nobody could suggest that Mr. Wilson would have the right to call Mr. Sturzenegger on direct and ask him leading questions.

THE MASTER: Why not?

MR. WILSON: In a discovery deposition?

MR. SCHWARTZ: Pure discovery. But then it is inadmissible. It is leading your own witness who is biased in your favor. Certainly he can ask him, "Where are the papers?

Aren't the papers in your files? Aren't the papers thus and thus?'' But that isn't evidence.

He certainly, your Honor, on trial couldn't call Mr. Sturzenegger and ask him leading questions. Why should he be able to put that in a deposition transcript and then introduce it on trial?

THE MASTER: Well, the use of it on trial would depend upon the contingencies which are provided for in the rules.

MR. SCHWARTZ: Oh, if it is understood that any leading questions—after all, your Honor, ordinarily a Master is not present at a deposition. If Mr. Wilson were to ask a leading question—if you were not present—and I thought it not proper, I would object, and the matter would be presented to the trial judge at the point of introduction.

If your Honor would want to pass the question until

12105 technical trial, that is perfectly all right, but I want Mr. Wilson to be on notice that I would object to the admission in evidence of any answers to leading questions, and either give him an opportunity to reframe his questions or to secure your ruling that he may ask them, have them answered, and then introduce them. Getting the answer isn't the evil; the evil comes when it is introduced as evidence.

THE MASTER: Well, I'll tell you, here is my view of the thing. It is an entirely new question to me, and since you suggested it the other day I haven't had even a minute to think about it, as I have been tied up with some other matters. As you both suggest, it hasn't arisen before in your own experience. I think the authorities are not right on the head. Mr. Wigmore, as you say, analyzes it out from the viewpoint of causes and reasons, which is his method.

I would like to think it over a little bit. Perhaps that would be the best way to dispose of it for the moment. You are serious in urging the objection and it may be an important objection. Let's pass it for the moment, and if possible avoid the question for the rest of the afternoon, Mr. Wilson, if it is possible.

MR. WILSON: All right, sir.

THE MASTER: Off the record.

(Discussion off the record.).

THE MASTER: Let me think this overnight, and I will
12106 come in in the morning with what I can make out of it.

Let's go on, Mr. Wilson. Let's proceed as best we can this afternoon.

MR. WILSON: All right.

BY MR. WILSON:

Q. Mr. Sturzenegger, to round off the last question which gave rise to this argument, do you know whether or not the bank in Lisbon, Espirito Santo etc., was the state bank of Portugal? A. No, I do not know that.

Q. Now, I want to ask you: When did you first know of the name of an entity in Berlin as Handels und Industrie Kontor? A. The first time when I went through those papers. I was not acquainted with the name at all.

THE MASTER: Which was when, Mr. Sturzenegger?

THE WITNESS: Well, I have seen them in the last days. I am not sure now whether they were submitted already earlier so that I could go through them last year.

BY MR. WILSON:

Q. I think, perhaps, if these were documents we picked up last summer—I should say they were sent to you in September or October or November. A. These must be contained in those.

Q. I think so.

12107 A. Well, I went through, as time permitted, last summer. I can not remember having seen—at least it didn't strike me—those specific documents. I thought I had seen this name the first time during the last few days.

Q. In your stay here on the last trip? A. Yes, yes. Well, I cannot make a statement. I may have seen them during last summer and it didn't remain in my recollection.

Q. Now I will come specifically to the document in a very short time, but do you recall that in this group of documents that I had identified yesterday but have not yet shown you formally, there was a signature once or twice that looked similar to that of a Miss Polley? A. Certainly.

Q. And you had previously identified her in this deposition as being connected with what concern? A. With the Laenderbank.

Q. And had you made her acquaintance personally at any time? A. Yes. I think I made her acquaintance when I first went to Berlin, which was in spring of '31. It may be that I have seen her occasionally during a visit in the '30's. I am not sure about it.

Q. And is it not true that in the course of your deposition so far you have been able to identify her signature

12108 according to your best belief on some Laenderbank documents? A. Yes.

Q. Based upon what knowledge, Mr. Sturzenegger? A. Based, I believe, on the impression that letters sometimes signed from Laenderbank, where I know very well, of course, the signature of Mr. Pfeiffer, were countersigned by Miss Polley, and therefore this signature looked to me familiar.

Q. Now, did you have any hint of any character whatsoever of any connection between Miss Polley and Handels und Industrie Kontor before you saw any of these documents? A. Not at all. I told you I didn't know of the existence of this Kontor.

Q. Yes. Have you any information at all as to the character of business of Handels etc.? A. I have not the slightest idea.

Q. And do you have any knowledge of any character that

Handels etc. is a subsidiary of or related to Deutsche Laenderbank? A. No. I really have no knowledge. I cannot make a statement at the moment.

MR. SCHWARTZ: For convenience of the record I would like to note, if you will allow me, Mr. Wilson, that "Fraulein Polley" is written on Exhibits 2 and 8 which were introduced, and I believe in her own writing, and I further believe that

12109 Mr. Sturzenegger identified the signature.

MR. WILSON: Well, if it is on there, it is very likely that what you say is absolutely correct.

MR. SCHWARTZ: Are those her signatures that you, I am pretty sure, once identified in that box (indicating)?

MR. WILSON: In 2 and 8, you say?

THE WITNESS: I don't see it.

MR. SCHWARTZ: In the stamp, sir.

MR. WILSON: Up at the top, Mr. Sturzenegger.

MR. SCHWARTZ: And again here (indicating). I may be incorrect.

THE WITNESS: Well, it doesn't look here like the signature.

MR. SCHWARTZ: I see. All right.

MR. WILSON: Let's look at No. 8. There again is a box in No. 8. Your Honor, you should see these boxes. They don't seem to have any other disclosure that it is in relation to Handels.

BY MR. WILSON:

Q. Now, Mr. Sturzenegger, I want to show you Plaintiff's 17-19718.

MR. SCHWARTZ: Did you say "Plaintiff's"?

MR. WILSON: Yes.

BY MR. WILSON:

Q. And I ask you, sir, if you have ever seen that document

12110 prior to your inspection of either last fall or recently. Let me see how I can develop a phrase which will make that rather short. Mr. Sturzenegger, when I show these documents and ask you whether you have ever seen them, I mean in each case prior to our inspection of the Government's documents. A. Yes.

MR. WILSON: May that be apparent on the record, your Honor?

THE MASTER: I'm sorry, I was reading and didn't hear it. Do you mind reading that.

(The question referred to was read by the reporter as follows: "Mr. Sturzenegger, when I show these documents and ask you whether you have ever seen them, I mean in each case prior to our inspection of the Government's documents.")

THE MASTER: Yes; certainly.

THE WITNESS: No.

BY MR. WILSON:

Q. Your answer is no. Incidentally, can you identify Miss Polley's signature on that document? A. Yes, I believe that is the signature of Miss Polley because this signature in this way looks to me familiar.

MR. SCHWARTZ: Your Honor, may I say that I want to call special attention to the position here that the admissions that we spoke of the other day, whether or not based on hearsay or knowledge, are admissions.

12111 Mr. Wilson apparently plans to ask Mr. Sturzenegger whether he has ever seen any one of those documents. Now, we think that is just an indirect way of having your Honor read them, and we don't mind a bit, but we plan for such of them as have signature, and, as in this case, Mr. Sturzenegger having identified it, to regard that as a complete and perfect authentication of the document.

Mr. Wilson, we submit, should not be permitted to have

it both ways. If this signature is being identified as that of Fraulein Polley, it becomes, we think, an authenticated document and we won't have to call her to identify her own signature.

I just wanted Mr. Wilson to know that, your Honor to know that, so this excursion into 80 documents is not to be understood as entirely for the purpose of demonstrating that Mr. Sturzenegger hasn't ever seen these documents.

Mr. Wilson: Your Honor, on that score let me say that an admission by Mr. Sturzenegger that he can identify the signature of AB. is undoubtedly an admission. But the claim of Mr. Schwartz, which is so characteristic of the claims which I have seen him and his associates make in the taking of depositions, that the mere identification of a signature of the writer is "a complete and perfect identification of the document"——

Mr. Schwartz: Authentication.

12112 Mr. Wilson: Authentication of the document—I do not subscribe to that in any way, shape, or form.

Mr. Schwartz: You appreciate we readily grant there may be a distinction between authentication and admissibility. But authentication means: Is it genuine? Is this a letter written by a person named Polley of some organization? And I think you must agree that if the signature is identified, unless we have forged the whole thing——

Mr. Wilson: That that makes the letter genuine?

Mr. Schwartz: Yes.

Mr. Wilson: I wouldn't agree to that at all, no, sir.

Mr. Schwartz: All right, we stand disagreed.

The Witness: May I again refer to what I have said on previous depositions, particularly on this signature. It looks to me, I believe to recognize it, as Miss Polley's signature. I am not so familiar with it as with others, with Pfeiffer's; where I could swear to it.

By Mr. Wilson:

Q. Now, Mr. Sturzenegger, with respect to the document which you have before you, I will ask you whether you

knew that on or about July 19, 1943, Handels etc. requested Deutsche Laenderbank to remit to the Banco Espirito Santo & Commercial, Lisbon, through a Swiss bank and to the credit of Consul Theodore Dimanow, the equivalent escudos of Reichsmarks 1 million?

12113 A. No, I didn't know that.

Q. Did you know that on or about July 19, 1943, by this letter or otherwise, Handels etc. requested DLB to remit to Banco Aleman Transatlantico, Madrid for Consul Dimanow the equivalent in Swiss francs of Reichsmarks 750,000? A. I didn't know that neither.

Q. Do you know Consul Dimanow? A. No.

Q. Do you have any idea of what country he is a consul? A. No. I mean, I have seen it from those papers, a reference, I believe, as to Bulgaria or something like that.

Q. Well, during the war did you ever hear of the character? A. No.

MR. WILSON: Now, your Honor, what is being done that you see these documents concurrently? Does Mr. Schwartz hand you a copy of the instrument?

MR. SCHWARTZ: Yes, that is the document (indicating).

BY MR. WILSON:

Q. I show you, Mr. Sturzenegger, Plaintiff's 18-1978, and ask you whether you have ever seen that letter before. A. No, I haven't seen that before.

Q. There again, what do you think of the signature of Miss Polley? A. Well, it seems to be the same, the signature of

12114 Miss Polley, as I told you before.

Q. Have you ever known of any telephone calls between Handels and Deutsche Laenderbank? A. No.

Q. Did you know that Handels stated that it changed its previous order— A. No.

Q. —and made a new request with respect to the transmission of escudos and Swiss francs for Consul Dimanow? A. No, I didn't know that.

Q. I show you next Plaintiff's Exhibit 19-19784.

MR. SCHWARTZ: I think we should note for the record that that is Defendants' Exhibit 1 already introduced. That is the one that you introduced no doubt inadvertently with your own number, but you chose not to amend it when I called your attention to it.

MR. WILSON: I am much obliged to you, and I withdraw the last question.

MR. SCHWARTZ: I take it you are passing your Exhibit 20-19786 because it is our Exhibit 17.

MR. WILSON: Thank you, yes. I am also passing my exhibit 21-19788 and 22-19789.

MR. SCHWARTZ: We are surprised.

MR. WILSON: I think perhaps that has to do with the transaction that we know of. That is my reason for it. They

12115 are available. You can show them to Mr. Sturzenegger. His Honor can see them. They are attached to the deposition.

BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you Plaintiff's Exhibit 23-19792 and ask you, sir, if you are familiar with any of the contents of that letter. A. No, I am not.

Q. Now, let me direct your attention to a portion of it. I wish you would read that more carefully. Is that not in relation to the transaction that you— A. I thought your question was directed to the fact that I had knowledge of this letter.

Q. Oh, I see. Well, did you or did you not have knowledge of the existence of this letter? A. No; no.

Q. Now, will you examine the contents of that letter and state whether you know whether it relates to the winding up of your participation in the transaction.

MR. SCHWARTZ: Do you mean "know," or, "whether you deduce from the letter"?

MR. WILSON: Whether he knows. I don't want him to deduce from the letter.

THE WITNESS: And may I ask for your question?

BY MR. WILSON:

Q. My question is—and perhaps it may call more for
12116 deduction than fact: Do you know whether this letter relates to the subject matter of the escudos and Swiss francs? A. Yes, I am convinced it connects to that.

Q. With which you were involved? A. The name of my firm is named in it; the amounts are the well known amounts in this transaction.

MR. SCHWARTZ: Your Honor, I object. I think this is irrelevant. It is unimportant, but it is certainly a waste of time. Mr. Wilson knows that Mr. Sturzenegger doesn't know anything about this letter. We know he doesn't know anything about this letter; that is why we didn't present it. Then he asks him, "Do you know?" and he answers, "I am convinced," and they are having a conversation, to put it frankly, at government expense and at your expense.

If Mr. Wilson wanted us to stipulate that the letter is true or that after Banco Aleman received the money they did confirm the receipt to Laenderbank, we would. It is unimportant. It is irrelevant.

THE MASTER: Well, I think he answered the question, didn't he?

MR. WILSON: Yes, at government expense, your Honor. That is the important part.

MR. SCHWARTZ: Mr. Wilson asked him if he knew. Then he said, "It is really a matter for deduction." Then Mr. Sturzenegger said he was convinced. And Mr. Wilson proposes
12117 to do this for 60 exhibits, your Honor.

MR. WILSON: It takes time, doesn't it?

MR. SCHWARTZ: It sure does.

THE MASTER: Well, I assume that Mr. Wilson's object is

to show that the witness did not at the time have any knowledge of the transactions which were outlined in those various exhibits. Is that so?

MR. WILSON: You see, we are in this early period, or in these early exhibits. There is an overlapping between things that were happening between Handels and Deutsche, and the cleaning up, on the other hand, of the Sturzenegger participation in the escudos and the Swiss franc transactions. Now, rather than just hand-pick one group here, we have intended to draw from the files all of the papers relating to this transaction.

I am about to ask the witness to be sure that the document that he has before him relates only to the one transaction that he had, that he didn't have a second transaction involving 1,200,000 Swiss francs, and he didn't have a second transaction involving 9,800,000 escudos, don't you see?

THE MASTER: I think it is proper for you to bring that out.

BY MR. WILSON:

Q. Mr. Sturzenegger, the transaction that was reflected in the earlier exhibits that Mr. Schwartz showed you—

12118 A. Yes.

Q. —1,200,000 Swiss francs and 9,800,000 escudos —you only dealt with one of each of those sums? A. Certainly.

Q. There were no duplications? A. No.

Q. I see. There was no second time that you were asked to handle transactions of that kind? A. No.

Q. Now, I hand you Plaintiff's Exhibit 24-19794 (J)-1, and ask you, sir, if you knew of the existence of such a communication from Deutsche Laenderbank to Handels etc. A. No, didn't know that.

Q. Did you know that on or near that date, that Deutsche Laenderbank had written to Consul Dimanow about the matter? A. I have no idea.

Q. I show you now Plaintiff's Exhibit 25-19794(3)-2, and ask you, sir, if you ever saw that telegram or cable before. A. No, I didn't see it before.

MR. SCHWARTZ: Pardon me, Mr. Wilson. Really, you are going faster than we can possibly get the documents. Remember, you only had one copy, and we have to open the jackets.

MR. WILSON: I was trying to save government time, if not expense.

MR. SCHWARTZ: You could do that by stopping the circus.

12119 MR. WILSON: I could have said that to you in January. Maybe I did.

THE WITNESS: I have answered the question already.

BY MR. WILSON:

Q. Sir? A. I have answered already. I didn't know that.

Q. Did you know that on or about September 22, '43, the Laenderbank so communicated to Banco Aleman at Madrid? A. No, I didn't know that.

Q. I show you now Plaintiff's Exhibit 26-19794(3)-3, and ask your if you have ever seen that letter prior to our inspection. A. No, I haven't seen it.

Q. Were you aware at any time of the fact that on or about September 22, 1943, Deutsche Laenderbank communicated with Consul Dimanow, according to the contents of that letter? A. No, didn't know that.

Q. I show you, Mr. Sturzenegger, Plaintiff's Exhibit 27-19795(2)-1 and ask you if you ever saw that letter prior to inspection in this case. A. No, I didn't see it.

Q. And were you aware of the fact that on or about September 22, 1943, Deutsche Laenderbank so communicated to Banco Aleman at Madrid? A. No. I didn't know that.

12120 MR. SCHWARTZ: Why don't we ask him if the second paragraph represents the truth?

MR. WILSON: Now, Mr. Schwartz, remember what you said to me about interfering with your examination.

MR. SCHWARTZ: Uh-huh. It refers to his firm and what he did.

MR. WILSON: All right, you sit there and redirect on that. You know you can ask him leading questions about it, remember?

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's 28-19795(2)-2 and ask you if you ever saw that document before. A. No, I didn't see it.

Q. Were you aware of the fact that Banco Aleman so communicated with Deutsche Laenderbank on September 15, 1943? A. No.

Q. Now we will adopt Mr. Schwartz' suggestion with respect to this paper, since it is before me. Was it on or about that date that you ordered the Swiss francs 1,200,000 to be sent to Banco Aleman? A. That is correct.

* * *

12128 BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you now Plaintiff's Exhibit 31-19834 and ask you whether you have ever seen a copy of that document.

(The witness examined the document.)

THE WITNESS: No, I didn't see such a thing before. By "before" you understand it is your interpretation as given yesterday.

MR. WILSON: Before inspection, yes. It just saves me saying those words every time.

Your Honor, there is the English.

THE MASTER: Thank you.

By Mr. Wilson:

12129 Q. I show you next, Mr. Sturzenegger, Plaintiff's 32-19835 and ask you whether you have ever seen that document before.

(The witness examined the document.)

The Witness: No, sir.

Mr. Schwartz: Could Mr. Sturzenegger help us on the Hermes insurance premium? What is Hermes, if he knows?

By Mr. Wilson:

Q. You may answer, Mr. Sturzenegger, if you know. A. I see. I have a vague recollection that an insurance company has the name Hermes. I think it is a German one. I am not absolutely certain, but that is my guess.

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 33-19836 and I ask you whether you have ever seen that document before.

(The witness examined the document.)

The Witness: No, I haven't.

By Mr. Wilson:

Q. Now, I direct your attention to the reference to Hasturbank in both the upper and the lower sectinons of that exhibit. The upper section reads, "Credit Hasturbank, Basle Swiss francs 1,204,219 on 7/30/43." A. Yes.

Q. The only transaction that you know of involving this amount of Swiss francs is the one you have testified to before,

12130 sir? A. That is it.

Q. And in the lower section, under "Expenses," "Reichsmarks 3.60, our telegram of 9/15/43 to the Hasturbank." Do you recall that there were telegraphic communications? A. Yes, I recall it.

Q. On or about that date? A. On or about that date. I am not sure about the exact date, but at about this time.

Q. I show you next Plaintiff's 34-19841 and ask you if

you have been acquainted with the contents of that memorandum prior to your inspection of these records.

(The witness examined the document.)

THE WITNESS: No, sir.

THE MASTER: What was that question?

(The question referred to was read by the reporter as follows: "I show you next Plaintiff's 34-19841 and ask you if you have been acquainted with the contents of that memorandum prior to your inspection of these records.")

MR. WILSON: I don't mind asking him, your Honor, the familiar question, has he ever seen that document before.

THE MASTER: No, I can see it.

MR. WILSON: You had some thought, Mr. Schwartz?

MR. SCHWARTZ: Yes. I would like the record to show that from the speed with which these are being handed to the

12131 witness, and his readiness to answer, and obviously that he is not reading them before he answers, it indicates that he is already aware of what his testimony will be. That is all.

MR. WILSON: May I have that exhibit a moment, your Honor.

BY MR. WILSON:

Q. Mr. Sturzenegger, this memorandum states:

"Re telephone conversation with Director Dr. Simon and Hermes.

"I referred to our telephone conversation of October 15, 1943, with Dr. Habicht concerning the significance of the clause pertaining to re-transfer and loss in foreign exchange in the Reich Guarantee for Import Transaction Re. 8747/Fa. No. 1 of July 22, 1943, in connection with which Dr. Habicht stated in the conclusion that we would have to recall the foreign exchange immediately if it was certain that the transaction would not take place."

Is that a fair translation of that first paragraph? A. Yes, I should say so.

Q. Were you made aware, prior to your inspection and reading of this document, of the purport and effect and text of that paragraph, sir? A. Certainly not.

Q. The memorandum continues:

"The state of affairs at present was said to be as follows: Consul Dimanow received a telegram from the Bulgarian Legation.

12132 in Portugal to the effect that the heretofore promised export license from Portugal had been deferred until further notice. (The purchase permit had been given and is still valid at present.) Mr. Dimanow will go to Portugal in about a week in order to settle the matter with the men involved in the transaction. He will try simultaneously to get the export license after all. In about three or four weeks he will be able to tell us definitely whether the transaction, the execution of which is now as before of great importance to the Reich, can be made after all on the basis of the export license."

Mr. Sturzenegger, is that a fairly accurate translation of the second paragraph of that memorandum? A. Yes.

Q. Were you contemporaneously acquainted with any of the details mentioned in that memorandum? A. No, I was not.

Q. Continuing: "The question arises whether it is now the right moment to withdraw the foreign exchange. Dr. S. said no." Undoubtedly, I may add, "S." means "Simon" at that point. "The prospect of obtaining the export license has become worse, it is true, but it is not yet definitely sure that the transaction would come to nothing because of this fact, since Dimanow still has a 'saving action' in view. Since Germany is very much interested in the execution of the

12133 transaction, we are to wait for Dimanow's decision first and then give Hermes definite information of

the result of his endeavors—an intermediate report, however, in two weeks."

Mr. Sturzenegger, is that a reasonably accurate translation of the third paragraph? A. I should say so.

Q. Were you acquainted with any of the details stated in that paragraph? A. No, I wasn't.

Q. Were you aware of any of the problems discussed therein? A. No, I wasn't.

Q. Continuing: "I had previously had a conversation with Mrs. Kleinfeldt, who said she was a consultant. She stated that if the foreign exchange had to be recalled now —which she wanted to inform us of after having read the Reich guarantee, but instead of which we received Director S.'s call—it would be arranged that the Reich guarantee remain in abeyance until it is certain whether Dimanow had succeeded or not regarding the export license. The Reich guarantee (without further fees) would apply again in three or four weeks when the transaction has definitely been concluded."

Mr. Sturzenegger, is that a fair translation of the fourth paragraph of that memorandum? A. Yes.

12134 Q. Were you familiar with any of the problems discussed in that memorandum? A. No, I was not.

Q. Mr. Sturzenegger, I show you next Plaintiff's Exhibit 35-19848 and ask you if you have ever seen that memorandum prior to inspection.

(The witness examined the document.)

THE WITNESS: No, I haven't seen it before.

BY MR. WILSON:

Q. Mr. Sturzenegger, this purports to be a memorandum for the files of Deutsche Laenderbank, November 12, 1943, "Re tin import transaction." I will read it to you by paragraphs:

"On November 11 of this year Director Pfeiffer instructed Director Moser to have the foreign exchange in

Madrid for the tin import transaction withdrawn immediately. At the same time he mentioned that Mr. Dimanow would go to Madrid within a week or two in order to settle the matter with the persons concerned therewith. It thereby became uncertain whether Mr. Dimanow would have to make use of the Madrid foreign exchange for this purpose or whether the whole amount could be withdrawn."

Is that a fair translation of that first paragraph, Mr. Sturzenegger? A. Yes, in my opinion.

12135 Q. Were you familiar with any of the details which are recited in that? A. No, I wasn't.

Q. Were you made acquainted with them contemporaneously with their occurrence? A. No.

Q. Did you learn of them prior to your inspection of this document, sir? A. No.

Q. Continuing: "On November 11 of this year Mr. Dimanow could no longer be reached, since he was not in Berlin. When he telephoned Director Pfeiffer on November 12 of this year and the latter had the call put through to Director Moser, it was found that Mr. Dimanow did not need the foreign exchange in Madrid to settle the matter and that the whole amount could be withdrawn."

Is that a fair translation? A. Yes, sir.

Q. Were you familiar with the events which are purported to be described therein? A. No, I wasn't.

Q. Continuing: "Director Moser thereupon instructed Mr. Herzberg—Foreign exchange Department—immediately to withdraw without delay the foreign exchange in Madrid after arranging with the Reichsbank where it wished the foreign

12136 exchange to be sent."

Were you acquainted or made acquainted with any of the details stated in that paragraph, sir? A. No, sir.

Q. Continuing: "The Reichsbank asked Mr. Herzberg whether the Reich Office was also in agreement with the withdrawal and remarked that in offering the foreign ex-

change we would have to give a written statement to it at the same time that the withdrawal was made in agreement with the Reich Office."

Were you made acquainted with the discussion outlined in that paragraph, sir? A. No, I was not acquainted.

Q. Continuing: "My first telephone conversation with Mr. Dimanow about whether the approval of the Reich Office had been received was without result. I could reach him only at 4 p. m. Mr. Dimanow declared that the Reich Office had not been asked for information on this subject, but that he would get in touch immediately with the consultant of the Reich Ministry of Economics and let us know. I also said that the matter was very urgent in view of the fact that we could not withdraw the foreign exchange before the opinion of the Reich Ministry of Economics had been received. Mr. Dimanow promised to attend to the matter immediately."

Did you know of any events described therein? A. No, I didn't know that.

12137 Q. I show you next, Mr. Sturzenegger, Plaintiff's 36-19849 and ask you, sir, if you ever saw that before the inspection.

(The witness examined the document.)

THE WITNESS: No, I didn't see it before.

BY MR. WILSON:

Q. Did you know, sir, whether on or about November 12, 1943, Handels und Industrie Kontor communicated with Deutsche Laenderbank requesting the recall of the foreign exchange in question since the intended import transaction had not materalized? A. No, I didn't know that.

Q. I show you next Plaintiff's 37-19852 and ask you, sir, if you have ever seen that cable before.

(The witness examined the document.)

THE WITNESS: No, I haven't seen it before.

By Mr. Wilson:

Q. Were you aware of the fact that on or about the date stated in the cable the transaction referred to therein was effected? A. No.

Mr. Schwartz: Could Mr. Sturzenegger tell us, if he knows, what that apparent cable address is, "Ariab"?

The Witness: No, I have no idea.

By Mr. Wilson:

12138 Q. I show you next, Mr. Sturzenegger, Plaintiff's 38-19854 and ask you, sir, if you have ever seen that before.

(The witness examined the document.)

The Witness: No, I haven't seen it before.

By Mr. Wilson:

Q. I ask you, sir, whether you are aware of the fact that on or about November 16, 1943, if it be a fact, that Deutsche Laenderbank communicated to the Reichsbank stating:

"By order of our principal, the Handels und Industrie Kontor G.m.b.H., Berlin NW 7, we are remitting to you again, as agreed, the aforementioned foreign exchange amounts which we acquired from you on the basis of foreign exchange certificates numbered therein."

Then comes a description of the Swiss franc amount and the escudos amount.

Were you aware that that communication took place, sir? A. No, sir.

Q. I show you next, sir, Plaintiff's 39-19855, and ask you, sir, whether you have ever seen that before.

(The witness examined the document.)

The Witness: No, I haven't seen that before.

By Mr. Wilson:

Q. I ask you, sir, whether you were aware of the fact, if it be a fact, that on or about November 16, 1943, Banco Aleman at Madrid communicated with Deutsche Landerbank to the

12139 effect that Banco Aleman had received Deutsche Laenderbank's telegram of the 13th, by which Deutsche Laenderbank canceled their wired order of September 22 and simultaneously instructed Banco Aleman to remit the Swiss franc amount to the Credit Suisse at Zurich and the escudo amount to the Banco Espirito Santo at Lisbon in favor of the Reichsbank, Berlin.

Were you aware of that, sir? A. No, I wasn't aware of such a fact.

Q. Were you aware of the fact that at or about that time, if it be a fact, Banco Aleman remitted to Kreditanstalt in Zurich the Swiss francs less a commission? A. No, I was not aware of such a fact.

Q. Were you aware of the fact, if it be a fact, that on or about that time Banco Aleman remitted to Lisbon, to the Bank of the Holy Spirit, the escudos less a commission? A. No, I didn't know such a thing.

Q. Were you aware of the fact that both amounts were put to the credit of the Reichsbank, Berlin for the account of Consul Theodor Dimanow? A. No, I didn't know that.

Q. Were you aware of the fact, if it be a fact, that Banco Aleman instructed their correspondents in Lisbon and Zurich by telegram to wire the Reichsbank in Berlin of the above payments? A. No, I didn't know that.

12140 Q. Were you aware whether the Banco Aleman cabled or telegraphed Deutsche Laenderbank:

"Yours thirteenth orders credit Arieb favor Reichsbank account Theodor Dimanow less one and three fourths per thousand our fee executed"? A. No, I wasn't aware of such a thing.

Q. Or that Banco Aleman considered itself relieved of

the above amounts with regard to Deutsche Laenderbank and Consul-Dimanow? A. No, sir.

Q. I show you next Plaintiff's Exhibit 40-19858, sir, and ask you if you have ever seen that document prior to inspection.

(The witness examined the document.)

THE WITNESS: I haven't seen it.

BY MR. WILSON:

Q. Were you aware as to whether on or about the date of this communication, to wit, November 17, 1943, the Deutsche Laenderbank communicated to the Reichsbank—A. No, I didn't know that.

Q. —with reference to the escudos and the Swiss francs? A. No.

Q. Your answer is no? A. I didn't know.

Q. Were you aware that in that communication or by any

12141 communication, Deutsche Laenderbank told the Reichsbank that in consequence of the arrangements made with the Reichsministry of Economics and the Reich Office for Iron and Metals, the goods transaction based on the aforementioned purchases should be considered definitely terminated? A. I didn't know such a fact.

Q. Or that the Reichsbank was requested to keep the remitted foreign exchange amounts for the account of the Deutsche Laenderbank until the 24th instant? A. No.

Q. And until that day not to convert them into Reichsmarks? A. I didn't know such a thing.

MR. SCHWARTZ: Can Mr. Sturzenegger tell us, if he knows, if that Reichsstelle Eisen und Metall is part of the Reichsministerium or a separate office?

THE WITNESS: I have no idea. I don't know.

BY MR. WILSON:

Q. I hand you next, Mr. Sturzenegger, Plaintiff's 41-19864 and ask you if you will examine it.

(The witness examined the document.)

THE WITNESS: No, I didn't see the document before.

BY MR. WILSON:

Q. Mr. Sturzenegger, I will ask you whether you knew, prior to reading this document recently, that on or about
12142 November 18, 1943, Deutsche Laenderbank communicated with Handels etc. regarding the acquisition and remittance of Swiss francs and escudos to the Banco Aleman Transatlantico for Consul Dimanow. A. No, I didn't know that.

Q. Did you have any information at all with respect to the question of whether the foreign exchange would be returned to the Reichsbank or whether the matter would be held in abeyance for the time being? A. I had no information at all.

Q. Did you have any information whatsoever as to the status of the matter on or about that time? A. No, no idea. I was not informed.

Q. Mr. Sturzenegger, I show you next Plaintiff's Exhibit 42-19916 and ask you if you ever saw that application prior to inspection.

(The witness examined the document.)

THE WITNESS: No, I didn't see it.

BY MR. WILSON:

Q. Mr. Sturzenegger, did you know on or about December 22, 1943, or at any other date, that Deutsche Laenderbank applied to the Chief of Finance, Foreign Exchange Control Office, Berlin for permission to make certain expenditures or disbursements to the Banco Aleman Transatlantico as stated therein? A. No, I didn't know that.
12143 Q. I show you——

MR. SCHWARTZ: I beg your pardon. Would Mr. Sturzenegger identify the signatures for Laenderbank.

THE WITNESS: Of Laenderbank?

MR. SCHWARTZ: For Laenderbank, yes. It is obviously some kind of application by Laenderbank and there seem to be signatures.

THE WITNESS: I couldn't.

MR. SCHWARTZ: Neither one?

THE WITNESS: No, no, they do not look familiar to me.

BY MR. WILSON:

Q. I show you next Plaintiff's 43-19925, Mr. Sturzenegger, and ask you if you ever——

MR. SCHWARTZ: You may wish to note for the record that that may have been called by a different number earlier—only may.

MR. WILSON: I see. You mean by me?

MR. SCHWARTZ: By you, I think, because we have it under a different number here. But I just do this in case somebody will be confused.

BY MR. WILSON:

Q. I ask you whether you ever saw this document prior to inspection.

(The witness examined the document.)

THE WITNESS: No, I haven't seen it before.

12144 BY MR. WILSON:

Q. And do you know of any of the details stated therein? A. No, I do not know them.

Q. I show you the next——

MR. SCHWARTZ: Pardon me, Mr. Wilson. There may be an ambiguity. Most of these, as we all appreciate except the Master who sees only the translations, are re-types of German texts, not this one, perhaps, but many of the earlier ones. When you ask Mr. Sturzenegger had he ever seen them, I take it you mean has he ever seen the document from which that was re-typed.

MR. WILSON: That's right, sir.

By Mr. Wilson:

Q. I show you now Plaintiff's Exhibit 45-19990 and ask you if you have ever seen that document before, Mr. Sturzenegger.

The Master: Are you skipping 44?

The Witness: This one you called now is 45.

Mr. Wilson: Oh, thank you very much. By inadvertance, if your Honor please, a document which bears the Government's base number of 19937, to which we added the prefix 44, was attached to our file of the other papers and was identified the other day in the course of a mass identification. I show it to you and state that it is my impression that it has nothing to do with this transaction in any way, shape, or form. If you genlemen care to correct me about that, I will be glad

12145 to have you do so.

Mr. Schwartz: While we are at it, perhaps Mr. Sturzenegger could identify the signatures.

Mr. Wilson: I have no objection at all to that being done, if he can.

The Witness: Well, the right signature is the same we have seen often as Moser, and the left—could it be Bruns?

Mr. Schwartz: I am sure I am not as familiar as you are with the Laenderbank people.

The Witness: I am not sure about the left. The right looks familiar to me.

By Mr. Wilson:

Q. Now, Mr. Sturzenegger, when I interrupted myself, I had handed you 45-19990, and— A. That is 45?

Q. Yes, 45, sir.

Mr. Schwartz: The one that Mr. Sturzenegger just perhaps identified in part was 44-19937.

Mr. Wilson: That's right. Now I am reverting to the document that I handed him before this last colloquy, which is 45-19990.

(The witness examined the document.)

By Mr. Wilson:

Q. And I ask you if you were aware of that memorandum or communication or whatever it may be.

12146 A. No, I was not.

Q. I notice a German word in there "getarnt" standing alone. A. Yes.

Q. Will you state what the translation of that word is. A. Well, I should say that is "cloaked."

The Master: What was it?

Mr. Wilson: "Cloaked," standing in a line by itself.

The Witness: At least that was translated formerly in such a way.

Mr. Schwartz: Mr. Sturzenegger, in one document that we found in checking through all of these, there was a similar word, I think. That is Plaintiff's Exhibit 88-19715, and I call your attention to the German sentence beginning, "Herr Maslowski."

The Witness: You mean the word——.

Mr. Schwartz: Yes, that sentence and the word "Tarnung" or "special Tarnung."

The Witness: "Special Tarnung"—that would mean a special cloaking.

By Mr. Wilson:

Q. And the date of that memorandum is what, Mr. Sturzenegger? A. Which was handed to me by Mr. Schwartz?

Q. Yes.

12147 A. That has the date of July 16, 1943.

Mr. Schwartz: May I note for the record that this purports to be a memorandum of a meeting at the Reichsbank. The word "cloaking" appears in the same sentence in which discussion of settlement takes place, and Mr. Dimanow is mentioned, Director Janke of the Reichsbank, and Councillor Maslowski, and the sentence that I

called Mr. Sturzenegger's attention to reads in translation:

"Mr. Maslowski promised to make the requested amounts available in time in Portugal as well as in Spain, but he emphasized that he was unable to effect any special cloaking and had to leave it to us to do what was necessary for this. Of all the Portugese banks he regarded the Banco Espirito Santo e Commerciale de Lisboa as the best suited to this purpose, and for certain reasons (English management) the Banco de Lisbra e Azores as out of the question. As could be gathered from the conversation, the Reichsbank would make the payment in Lisbon by a transfer from its account at the Banco Espirito Santo e Comercial de Lisboa to the payee designated by us—that is, H. Sturzenegger & Cie., Basle."

That is dated Berlin, July 16, 1943.

The German word "tarnen" or "Tarnung," Mr. Sturzenegger, means "to cloak" does it not?

THE WITNESS: Well, it has been translated often in such a way, and I think it is more or less correct. I mean, whether there is

12148 a shade more in this or the other direction, I am not expert enough in English to say that.

MR. SCHWARTZ: Have you known it as having that meaning in an economic wartime sense ever since World War I? I mean, have you known that it has been in current usage since at least World War I for that purpose?

THE WITNESS: Yes, it is a well-known word, "Tarnung." I only do not know whether now "cloaking" is the only or the absolute, adequate translation, but I do not know others.

MR. SCHWARTZ: Doesn't it have a peculiarity that it is both literally and figuratively "to cloak"? It comes from the Wagnerian cycle of legends, does it not?

THE WITNESS: I didn't get the last question.

MR. SCHWARTZ: Doesn't it have both the literal and poetic and economic meaning?

THE WITNESS: Yes.

MR. SCHWARTZ: It means the invisible cloak that the Wagnerian hero put upon himself?

THE WITNESS: Yes.

MR. SCHWARTZ: And it has been in current usage in the sense of concealing property away or abroad since at least World War I?

THE WITNESS: Well, it has sometimes been used in this meaning.

MR. SCHWARTZ: That's right.

12149 BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you next Plaintiff's Exhibit 46-19991 and ask you, sir, whether you have seen that document before inspection.

(The witness examined the document.)

THE WITNESS: No, I didn't see it before.

BY MR. WILSON:

Q. Do you find the word "getarnt" mentioned again in that memorandum? A. Yes.

Q. Were you made acquainted with the fact that on or about January 4, 1944 the Deutsche Laenderbank was giving consideration to the subject matter of that document? A. No, I didn't know that.

MR. SCHWARTZ: Oh, I meant to say in connection with Plaintiff's Exhibit 88, the document dated July 16, speaking of cloaking and Mr. Maslowski, I meant to call attention to the fact that it is dated some two or three days prior to Defendants' Exhibit 4, which was the letter from Laenderbank to Mr. Sturzenegger. And if I have described that document as Defendants' Exhibit 88, I'm sorry. I meant Plaintiff's 88.

MR. WILSON: In that connection I would call attention to the fact that it is interesting and important that the name Sturzenegger appears at the beginning of the trans-

action, but not after the transaction was rejected by Mr. Sturzenegger. And
12150 yet the Deutsche Laenderbank apparently pursued the matter as a cloaking transaction through other media later on after Sturzenegger rejected it.

By Mr. Wilson:

Q. I show you, Mr. Sturzenegger, Plaintiff's Exhibit 47-20016 and ask you if you have ever seen that document before, sir.

(The witness examined the document.)

The Witness: No, I haven't seen it.

By Mr. Wilson:

Q. Are you aware that on or about January 22, 1944 it appears that Dimanow communicated to Banco Aleman the text of that letter, if he did do so? A. Well, I was not aware of such a fact.

Q. Were you aware of the fact that Dimanow, on or about that time, if it be a fact, requested Banco Aleman to carry out the instructions of Deutsche Laenderbank as to the withdrawal of the moneys described in the letter, sir? A. No, I didn't know that.

Mr. Wilson: What was that paper you handed the Master, Mr. Schwartz?

Mr. Schwartz: I said I thought this was the next one coming up.

By Mr. Wilson:

Q. I show you, Mr. Sturzenegger, two documents next,
12151 Plaintiff's 48-20018 and Plaintiff's 49-20019, and ask you, sir, if you were aware of the banking notation purported to be described therein.

(The witness examined the documents.)

MR. WILSON: Did you hand the Master both of those, sir?

MR. SCHWARTZ: Yes.

THE WITNESS: No, I was not.

MR. SCHWARTZ: Does Mr. Sturzenegger know what the notations are, what they mean, what they could have meant?

MR. WILSON: Do you want him to speculate, Mr. Schwartz?

MR. SCHWARTZ: I asked: Does he know?

MR. WILSON: You said "could have meant."

MR. SCHWARTZ: Does he know what they mean?

BY MR. WILSON:

Q. Do you know what they mean as a fact, Mr. Sturzenegger? A. No, of course not. I can read them and I can try to speculate and draw conclusions.

Q. Mr. Sturzenegger, I show you next Plaintiff's 50-20020 and ask you, sir, if you have seen that before.

(The witness examined the document.)

THE WITNESS: No, I haven't seen that before.

BY MR. WILSON:

Q. Did you know whether on or about January 14, 1944 Handels und Industrie Kontor communicated with Deutsche Laenderbank to the effect that on the basis of foreign exchange

12152 certificates numbered as described therein, of the Reich Office for Iron and Metals of July 13, 1943 "in your possession, we request that you remit to Consul Dimanow"—that is, that Handels requested Laenderbank to remit to Dimanow at Banco Aleman Transatlantico the equivalent of Reichsmarks 1 million in escudos and Reichsmarks 750,000 in Swiss francs? A. No, I didn't know that.

MR. WILSON: There is that exhibit, your Honor.

THE MASTER: Thank you.

By Mr. Wilson:

Q. I show you Plaintiff's 51-20027(3)-1 and ask you, sir, if you have ever seen that document prior to inspection.

(The witness examined the document.)

The Witness: No, I haven't seen that before.

By Mr. Wilson:

Q. I ask you, Mr. Sturzenegger, whether you knew the fact, if it be a fact, that Deutsche Laenderbank requested Handels etc. on or about January 16, 1944—not requested, but wrote—to the effect that Deutsche Laenderbank had made available to Consul Dimanow at Madrid, Banco Aleman, escudos 9,800,000 and Swiss francs 1,200,000, and so forth? A. I didn't know that.

Q. Did you know whether Deutsche Laenderbank at the same time informed Handels that it would receive from the Reichsbank under separate cover the statement of acquisition of

12153 the two foreign exchange amounts? A. No, I didn't.

Q. I show you Plaintiff's 52-20027(3)-2.

(The witness examined the documents.)

The Witness: I haven't seen it before.

By Mr. Wilson:

Q. I ask you, Mr. Sturzenegger, whether you knew that Deutsche Laenderbank, on or about January 25, 1944, informed Banco Aleman that it was remitting for Banco Aleman escudos 9,800,000 to Banco Espirito at Lisbon, and Swiss francs 1,200,000 to the Union Bank in Zurich. A. I didn't know that.

Q. And did you know whether in fact such remittances had been made on or about that date? A. No, I did not know.

Q. Did you know whether those remittances were re-

quested to be held for the disposal of Consul Dimanow? A. I did not know that.

12157 Q. Mr. Sturzenegger, I show you Plaintiff's 52-20027(3)-3 and ask you if you ever saw that document before inspection.

(The witness examined the document.)

12158 THE WITNESS: No, I didn't see that before.

BY MR. WILSON:

Q. I ask you whether you were aware of the fact, if it be a fact, prior to reading this letter, that on or about January 25, 1944, Deutsche Laenderbank communicated with Consul Dimanow in the manner and to the extent stated therein. A. No, I didn't know that.

MR. SCHWARTZ: May I call your attention—I always pause in such questions, Mr. Wilson, so that you may permit me—to the last paragraph of that letter in which Laenderbank seems to be saying that they thought according to the foreign exchange regulations they were compelled to comply with the order of the Reichs Office for Iron and Metals.

MR. WILSON: What is your question?

MR. SCHWARTZ: First to call attention to it. Did you know that Laenderbank did any business during the war in which it was obligated to comply with the orders of the Reichs Office for Iron and Metals?

THE WITNESS: No, didn't know such a thing.

MR. SCHWARTZ: Did you know the function of the Reichs Office for Iron and Metals?

THE WITNESS: No.

MR. SCHWARTZ: Did you say you had never heard of them before now, or have you heard of them before?

THE WITNESS: I don't think that I have heard of such an

12159 office before.

MR. SCHWARTZ: You knew, I suppose, that purchases and allocations of raw materials like iron and metal

were subject to the controls of the German Government?.

THE WITNESS: No, I was not acquainted with all such internal organization matters within Germany.

MR. SCHWARTZ: I am sure you know that as a general matter raw materials in Germany, basic raw materials, were subject to control by the German Government.

THE WITNESS: I couldn't say yes. I mean, everything in Germany was in some way organized; it was the specialty, I was in some way, of course, as a banker, acquainted with foreign exchange regulations and similar matters, but I didn't know how now the raw material, metal branch, and such matters were organized.

MR. SCHWARTZ: All right.

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's 54-20028, and ask you if you ever saw that telegram or cable, if that be what it is, prior to inspection.

(The witness examined the document.)

THE WITNESS: No, I didn't see it before.

BY MR. WILSON:

Q. The Schweizer Bank is— A. —the Swiss Bank Corporation.

12160 Q. The Swiss Bank Corporation? A. Yes, the Swiss Bank Corporation. That is the telegram address.

Q. Did you know whether on or about the date of this document Laenderbank so communicated with Schweizer Bank? A. No, I didn't know that.

* * * *

12162 BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you next Plaintiff's Exhibit 55-20029 and ask you to look at that and state whether you have seen that document or its original —and I mean that in all my questions—prior to inspection. A. No, didn't know that.

Q. And did you know whether on or about January 26, 1944 Laenderbank communicated with the export office for Berlin as described in the address? A. No, I didn't know such a thing.

Q. In the text of that letter? A. No, didn't know such a thing.

12163 Q. Nor apparently an enclosure for dispatch by courier to the Banco Aleman at Madrid?. A. Neither.

Q. Nor that instructions were given to see that the letter was delivered as soon as possible to the bank? A. I didn't know such a thing.

MR. SCHWARTZ: Mr. Sturzenegger, I would like to call your attention to our exhibits, Defendants Exhibits 2 and 3, which, for you gentlemen, were an exchange of letters between the information office for communications and this thing of Berlin in Pomerania. I remember we had a lot of trouble deciphering that. Do you take that to be the same "Ausstellung" for Berlin, Pomerania, as in Exhibits 2 and 3?

MR. WILSON: Are they not worded exactly the same, Mr. Schwartz?

THE WITNESS: Do you mean these two, Mr. Schwartz?

MR. SCHWARTZ: Take them one by one. Take Exhibit 2 with the one you have just been looking at—20029.

THE WITNESS: Yes.

MR. SCHWARTZ: It isn't so much that they are exactly the same, Mr. Wilson, as they are a little illegible.

THE WITNESS: And your question is whether——

MR. SCHWARTZ: Whether you make them out to be the same.

THE WITNESS: It's over-printed, the whole thing, isn't it?

12164 (The witness examined the documents referred to.)

MR. WILSON: Mr. Schwartz, I'm not sure whether that is proper for Mr. Sturzenegger to attempt that. If there is

some way that you and I could agree or disagree about it I'd be glad to do it. I don't know that——

MR. SCHWARTZ: Well, I wanted to make the point that it's apparently the same organization carrying mail as carried the mail, the letter, that went to Mr. Sturzenegger through the German Consul. In Defendants' Exhibit 3 it is the Aussenwirtschaftsabteilung bei den Gauwirtschaftskammern Berlin, Brandenburg und Pommern. On Defendants' Exhibit 2 there was a printed letterhead which read that but they had changed one word and then they had changed the address. In this exhibit that you have just asked Mr. Sturzenegger about, it is the Aussenhandelsstelle fuer Berlin, West-Brandenburg und Pommern.

MR. WILSON: What's the address?

MR. SCHWARTZ: The address on your exhibit is Neue Friedrichstrasse (Boerse), dated January 26, 1944. These letters, Defendants' Exhibits 2 and 3, had a printed address. I can't make out the printed one, but it's been changed to Berlin C. 2, Klosterstrasse 41.

MR. WILSON: That's what 3 is.

MR. SCHWARTZ: That's the same, you say, as 3. I just wanted to make a point of the similarity or identity, I'm

12165 not sure which, of the organization in the two groups of documents.

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 56-20042 and ask you if you will examine it, please, sir.

(The witness examined the document.)

A. What is your question?

Q. You have examined it? A. Yes.

Q. Have you ever seen it prior to inspection? A. No, I haven't.

Q. Were you aware of any such communication between Banco Aleman and Deutsche Laenderbank on or about February 7, 1944? A. No, I was not.

Q. Is the Deutsche Ueberseeische Bank related, if you know, to Banco Aleman Transatlantico? A. Yes.

Q. Is it the same bank? A. It's the same bank. The one is a branch of the other I think.

MR. SCHWARTZ: Is that then, the one in Japan, Deutsche Uebersee Asiatische in Japan, a branch of this same organization?

THE WITNESS: How is it called in Japan?

12166 MR. SCHWARTZ: Deutsche——

THE WITNESS: Deutsche Ueberasiatische? Or is it——

MR. WILSON: "Asia" is in there somewhere.

THE WITNESS: Well, there I'm not sure. I mean the name is similar. I couldn't make a statement. But as to those two, Madrid and Berlin, I think they are the same institutions.

BY MR. WILSON:

Q. I show you next Plaintiff's Exhibit 57-20044 and ask you whether you ever saw that document prior to inspection.

(The witness examined the document.)

A. I didn't see it before.

Q. Were you aware of any such communication between Laenderbank and the Uebersee Bank in Berlin on or about February 8, 1944? A. No, I was not aware.

Q. Were you aware of the problem which is referred to therein of communication? A. No, sir.

Q. I show you next Plaintiff's Exhibit 58-20046 and ask you if you will examine it and state whether you have ever seen that prior to inspection.

(The witness examined the document.)

A. I didn't see it before.

Q. Mr. Sturzenegger, I will ask you whether on or
12167 about February 9, 1944 or any date you were aware of the fact, if it should be a fact, that Banco Aleman

communicated with Laenderbank, informing Laenderbank that by order of the Reichsbank, Berlin, Banco Aleman had credited Deutsche Bank on a temporary non-interest bearing escudo account with the amount of escudos 9,800,000 which was said to have been remitted for Banco Aleman to Banco Espirito, Lisbon? Did you know of such a communication? A. No, didn't know such a thing.

Q. Did you know of the occurrence of such a fact, if it did occur? A. No, didn't know it.

Q. Did you also know whether on or about that date Banco Aleman informed Deutsche Laenderbank that according to wired instructions from the Swiss Bank at Zurich——

MR. SCHWARTZ: Basle.

No, sorry.

THE WITNESS: Gesellschaft, Zurich.

MR. SCHWARTZ: I'm sorry. I misspoke.

BY MR. WILSON:

Q. To repeat, did you know whether Banco Aleman stated to Deutsche Laenderbank that according to wired instructions from the Swiss Bank Corporation at Zurich— A. No, it's Schweizerische Bankgesellschaft.

Q. It's Bankverein in here.

12168 A. No, Bankgesellschaft. And the Zurich Bank here in the German text refers to the Union Bank, and the other to the Swiss Bank Corporation.

MR. SCHWARTZ: The German text. You're perfectly right.

MR. WILSON: Oh. Not having the German text before me, where the address is given at Zurich the reference is to which bank?

THE WITNESS: Union Bank.

BY MR. WILSON:

Q. Where the address is given Basle, the reference— A. Is Swiss Bank Corporation.

Q. All right. Then I will now reframe my question.

Were you aware that on or about February 9th in the same communication or by any other means Banco Aleman stated to Deutsche Laenderbank that according to wired instructions from the Union Bank at Zurich, Banco Aleman had credited Deutsche Laenderbank by order of Swiss Bank, Basle, on a temporary non-interest bearing Swiss franc account with the amount of Swiss francs 1,200,000? A. Didn't know such a fact.

Q. Did you know whether it was stated or whether it was a fact that the two foreign exchange accounts were held in Portugal and Switzerland for the account of Deutsche Laenderbank and for its risk? A. No, didn't know such a fact.

12169 Q. Did you know whether on or about the date stated or at any other time Consul Dimanow had withdrawn escudos 300,000 from the escudo amount stated above? A. Didn't know that.

Q. Did you know whether Banco Aleman so reported to Deutsche Laenderbank? A. No idea.

Q. I show you next Plaintiff's Exhibit 59-20047 and ask you to look at it and state whether you have seen it before.

(The witness examined the document.)

A. No, didn't know that before.

Q. Mr. Sturzenegger, were you aware as to whether Deutsche Laenderbank communicated on or about February 9, 1944 with the Deutsche Ueberseeische Bank in Berlin according to the text of this letter? A. No, didn't know that.

Q. Were you aware, sir, of the existence of the subject matter of the letter? A. No.

Q. I show you Plaintiff's Exhibit 60-20050, sir, and ask you whether you ever saw that document prior to inspection.

(The witness examined the document.)

A. I didn't see it before.

12170 Q. Mr. Sturzenegger, I will ask you whether on or about February 10, 1944 or on any other date you knew whether Banco Aleman communicated the contents of this letter to Deutsche Laenderbank. A. No, didn't know that.

Q. Did you know, sir, prior to reading this letter since inspection of any of the events mentioned therein? A. Prior to reading?

Q. Yes, sir. A. No.

Q. You had seen in some communication the number of Dimanow's passport, hadn't you? Wasn't that mentioned in— A. It was mentioned in several documents if I'm not mistaken.

MR. SCHWARTZ: Defendants' Exhibit 4? Is that right?

MR. WILSON: No. 4?

MR. SCHWARTZ: Yes.

BY MR. WILSON:

Q. But the matter of the remittance and the channels used therefor were unknown to you? A. Entirely unknown.

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 61-20051 and ask you whether you were aware of that communication, if it occurred. A. No, I was not aware of this communication.

12171 Q. Did you know anything about the subject matter of that letter from Ueberseeische Bank to Laenderbank? A. No.

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 62-20087 and ask you, sir, whether you ever knew of any of the disbursements therein described.

(The witness examined the document.)

A. No, sir.

Q. Or expenses therein enumerated? A. No.

Q. Or anything about the events which relate to those expenses? A. No, didn't know that.

MR. SCHWARTZ: Mr. Wilson, did your mean to pass 61?

MR. WILSON: Did I?

MR. SCHWARTZ: 20051. I wonder if it was called.

MR. WILSON: Off the record.

(Discussion off the record.)

MR. SCHWARTZ: Mr. Wilson, could I ask a question?

MR. WILSON: Sure.

MR. SCHWARTZ: In several of these documents, particularly 60-20050 and earlier ones, there is mention of the sum of escudos 9,803,921.50 and Swiss francs 1,294,219, which Banco Aleman, Madrid, at least once or twice says "was remitted to us by order of the Reichsbank via Espirito in Lisbon and

12172 Swiss Bankgesellschaft, Zurich." And in your questions as to whether Mr. Sturzenegger knows of the facts, I don't take it that he means he doesn't know that such sums went to Banco Aleman, because he remitted them, did he not?

MR. WILSON: But not by this event.

MR. SCHWARTZ: Right. Okay. I just didn't want——

MR. WILSON: Oh, no. I'm meaning to now——

MR. SCHWARTZ: You often ask: "Are you aware of any of the facts stated here?" And, of course, he was aware of the fact——

MR. WILSON: I wouldn't want to create that kind of a contradiction, no. But if the sums are similar but if the events are different, then I think it is even a different sum.

MR. SCHWARTZ: No, it's a reference to what is at the moment of this exhibit history. Those two sums exactly, Aleman says, were remitted to them by Reichsbank via Espirito, Lisbon, and Schweizerische Bankgesellschaft, Zurich. Now, in fact, identical sums, and, therefore, no doubt those sums were remitted through Mr. Sturzenegger.

MR. WILSON: Well, you see, the reason—and I'm quibbling with you perhaps—the reason I don't call them identical sums——

MR. SCHWARTZ: Well, identical as to the amount.

MR. WILSON: As to amount.—is that the values are
12173 fixed as of January 25 and January 26, 1944 and not the values in July of 1943.

MR. SCHWARTZ: I think it's still the exact same amount.

MR. WILSON: I will agree with you on that. I won't quibble.

MR. SCHWARTZ: You mean the escudo was worth differently in July than February?

MR. WILSON: No, I mean valuation may be based upon foreign exchange dealings with the Reichsbank as of January 1944 instead of July of 1943.

MR. SCHWARTZ: But the exact identical amounts came to Mr. Sturzenegger July 19th or thereafter and went from him onwards to Aleman. And it is those exact identical amounts which are mentioned say in our Exhibit 4 and in this Exhibit 60 of yours. It's the same money still with Aleman, is it not?

MR. WILSON: No.

MR. SCHWARTZ: Well,——

MR. WILSON: The same quantity of money.

MR. SCHWARTZ: Of course.

MR. WILSON: But not the same money.

MR. SCHWARTZ: Well,——

MR. WILSON: Because you will remember that the transaction in Exhibit 52 is a new remittance by Deutsche Laenderbank to Banco Aleman via Bankgesellschaft and via Bank
12174 Espirito Santo.

MR. SCHWARTZ: Those are the channels Mr. Sturzenegger said he used to get the money to Madrid. He had the escudos in Lisbon, and he sent them on to Aleman, Madrid. He had the Swiss francs in Switzerland and I am sure he said that he sent them to Madrid via Union Bank, which is Schweizerische Bankgesellschaft, and, no doubt—am I not right?—through Swiss Bank, Basle, then through Union Bank, Zurich, and so on to——

THE WITNESS: No. If my recollection is correct not through Swiss Bank. It was transfer from Swiss National Bank, Union Bank and then Banco Aleman.

MR. SCHWARTZ: I see.

MR. WILSON: Mr. Schwartz, I don't mean to say that you are purposely confusing the event, but I am saying that as you and I indulge in this colloquy I have the impression that a confusion arises from your insistence that these are the same amounts. I want to say that from the point of view of arithmetic they are the same figures.

MR. SCHWARTZ: Right.

MR. WILSON: But I want to say that it is clear from Document 39 that Banco Aleman sent the money back to Laenderbank, and it is clear from Document 52 that Deutsche Laenderbank thereafter sent the money back to Banco Aleman.

MR. SCHWARTZ: I see.

12175 But the fact stated say in Exhibit—I agree fully with what you said, subject, of course, to checking, and I am sure you are right—but in Exhibit 60. Aleman says that these exact amounts were remitted "to us via Reichsbank, via Lisbon and Zurich." Well, how shall I put it? Mr. Sturzenegger knows that such facts existed because he was a step in the sending of such money.

MR. WILSON: Not at all. Gee, I thought at first that you were confusing, but I didn't see how that was possible.

THE MASTER: Look. I think I understand it from both aspects. Mr. Wilson contends the transaction came to an end. You, on the other hand, regard it as a step in a general process. I think the record shows perfectly clearly.

MR. WILSON: But, no, your Honor. Mr. Schwartz can't make that. And you, I submit, have no right to draw even that conclusion accurately from Mr. Schwartz's position.

THE MASTER: Well, I am stating his contention.

MR. WILSON: No, but it can't be his contention that it was a step in the process. The money went back to Berlin and started out again with complete ignorance on Mr.

Sturzenegger's part through some of the same channels, not all of the same channels, but not a step in the transaction as it relates to Mr. Sturzenegger.

THE MASTER: I see that.

MR. WILSON: As a matter of fact, it's because of what

12176 Mr. Sturzenegger did that they had to go all over it again.

MR. SCHWARTZ: That's an interesting point, which I hope you would develop with testimony.

BY MR. WILSON:

Q. I now hand you Plaintiff's Exhibit 63-20090, Mr. Sturzenegger, and ask you if you ever saw that before.

(The witness examined the document.)

A No, I haven't seen it before.

Q. Were you aware of such a communication? A. No, sir.

Q. Prior to your inspection? A. No.

Q. Have you ever known of the events described in such a communication? A. No, sir.

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 64-20102 and ask you if you have any knowledge of that communication or of the events described therein.

(The witness examined the document.)

A. No, I have not.

MR. SCHWARTZ: I think the courier service has moved again, gentlemen, according to this one. Now they're at Neue Friedrichstrasse, the stock exchange.

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit

12177 65-20116 and ask you if you knew of such a communication from Banco Aleman to Deutsche Laenderbank on March 7, 1944.

(The witness examined the document.)

A. No, didn't know such a thing.

Q. Did you ever know that the withdrawals were made by Consul Dimanow as described therein? A. No, sir.

Q. Mr. Sturzenegger, I ask you whether in March of 1944 or thereabouts you were requested by Deutsche Laenderbank or any other German agency to participate in the transmittal of a different quantity of escudos to Consul Dimanow. A. No, sir.

Q. I show you Plaintiff's Exhibit 66-20161(2)-1 and ask you, sir, if you ever saw that communication prior to inspection.

(The witness examined the document.)

A. No, sir.

Q. I ask you whether you knew of an occurrence on or about March 24, 1944 whereby Handels-und Industrie-Kontor requested Deutsche Laenderbank to remit by wire on behalf of Consul Dimanow escudos 17,300,000 to Banco Espirito Santo at Lisbon in favor of the Spanish Foreign Exchange Institute? A. No, didn't know such a thing.

Q. Do you know as a banker what the Spanish foreign Exchange Institute is?

12178 A. No. We had nothing to do with that. Seems to be what it purports to say.

MR. SCHWARTZ: It has a proper title as well as that descriptive phrase.

MR. WILSON: Instituto Espanol de Moneda Extranjera, Madrid.

BY MR. WILSON:

Q. You don't recognize it by that name? A. No. I do not doubt that it is the central office for foreign exchange or so. I do not know it.

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 67-20161(2)-2 and ask you if you ever saw that document which appears to be some kind of a notation prior to inspection.

(The witness examined the document.)

A. No, I haven't seen it before.

MR. WILSON: Gentlemen, may I have the original of this document if you have it?

MR. SCHWARTZ: All we have is a typewritten version of the German from which your photostat was made.

MR. WILSON: Do you have a source on the back of it?

MR. SCHWARTZ: Yes.

(Mr. Wilson examined the document.)

BY MR. WILSON:

Q. Mr. Sturzenegger, were you aware of any such memorandum being made, let me say specifically, by Deutsche

12179 Laenderbank or by anybody else on or about that date? A. No. I was not aware of the fact.

MR. SCHWARTZ: For the record I would like to call attention to certain similarities between references on this document and Defendants' Exhibit 5. Defendants' Exhibit 5, a similar kind of thing, of course varies as to date and says "RST. Berlin," which I now realize probably represents "Reichsstelle something, Berlin," whereas this exhibit you are now talking about says "Reichsstelle Eisen und Metalle:" Now, the number underneath I see probably no doubt is the reference to the foreign exchange permit—XII/Z 4/345/1 or 2, Defendants' Exhibit 5, as compared with the same number but ending in "slant 3" on this exhibit you have just shown Mr. Sturzenegger.

As well, Defendants' Exhibit 9, Mr. Wilson, which is very similar to Defendants' Exhibit 5. Defendants' Exhibits 5 and 9 refer respectively to francs and escudos.

MR. WILSON: Well, Mr. Schwartz, the numbers which you gave for the foreign exchange permit are not the same on

both documents. I thought you said they were. On our Document 67 the foreign exchange permit number appears to be XII/Z 4/345/3.

MR. SCHWARTZ: Right.

MR. WILSON: Whereas the number on your document 5-19719 is XII/Z 4/34521.

12180 MR. SCHWARTZ: No, I take that to be a "slant 1."

MR. WILSON: In place of the "2"?

MR. SCHWARTZ: In typewriting "slant 1." Then somebody has written a "2" over the slant, and somebody else has written a "2" above the "1." Which is why I called it "slant 1 or 2." I commented that your exhibit had "slant 3."

MR. WILSON: And if your exhibit has a slant where the 2 might be, the last figure on your exhibit is a 1, and the last figure on the exhibit that I have just shown the witness is a 3.

MR. SCHWARTZ: That's right. No doubt a further document in the same foreign exchange approval.

THE MASTER: What is the origin of this present exhibit? You can't tell from the English.

MR. WILSON: Your Honor, I framed the question based on the fact that on the reverse side of Mr. Schwartz's typewritten copy the source is given as Laenderbank.

MR. SCHWARTZ: 78 Under den Linden. It's a copy of a document we found in the Laenderbank files. The [redacted] is the actual German, sir, if that helps at all. That's how it looked in German. As well, Defendants' Exhibits 5 and 9, the same stamps on the back showing our office record. And we remember, don't we, that Handels, of course, had its address at that place.

MR. WILSON: At 78 Unter den Linden.

12181 MR. SCHWARTZ: Yes.

MR. WILSON: I have seen another address.

MR. SCHWARTZ: It may be in the testimony—but we'll certainly be able to prove it—Handels was an office dummy of Laenderbank.

MR. WILSON: I don't know.

MR. SCHWARTZ: I think that is implied in the fact the same people signed, and they're relatively senior people in Laenderbank, and they signed for Handels.

MR. WILSON: I'm certainly not prepared to resist the point at the moment, but I am not willing to concede it.

MR. SCHWARTZ: I understand.

MR. WILSON: I have seen another address which they call "Main Entrance 82."

MR. SCHWARTZ: Like Chemié and Sturzenegger. It's the air raid shelter Mr. David Wilson suggests.

MR. WILSON: Is this in the record?

MR. SCHWARTZ: I think it could well be. In that spirit I would like to note that I personally am convinced that the courier service keeps moving because they are bombed out each time.

BY MR. WILSON:

Q. I show you now, Mr. Sturzenegger, Plaintiff's Exhibit 68-20180 and ask you to state whether you ever saw that document before inspection.

12182 (The witness examined the document.)

A. No, I didn't see it before.

Q. Mr. Sturzenegger, were you aware of any telephone communications between Deutsche Laenderbank and Deutsche Ueberseeische Bank prior to or on March 31, 1944 with regard to any subject? A. No, sir.

Q. Particularly with regard to the subject of the remittance of escudos 20,000,000? A. No, sir.

Q. And more particularly with respect to escudos 20,000,000 to Banco Espirito at Lisbon in favor of the Spanish Institute? A. No.

MR. WILSON: Your Honor and Mr. Schwartz—Mr. Schwartz will realize it and your Honor in a moment—when I refer to the Spanish Institute I mean the same institute whose name I gave in the previous question.

Mr. Schwartz, would you be kind enough to tell me what you claim to be the source of 20181?

MR. SCHWARTZ: The stamp on the reverse is again Deutsche Laenderbank. I mean the stamp is—you know—and then it's written in "Deutsche Laenderbank, 78 Unter den Linden.

MR. WILSON: Thank you.

BY MR. WILSON:

12183 Q. I hand you, Mr. Sturzenegger, Plaintiff's Exhibit 69-20181 and ask you if you were ever aware of the existence of this memorandum as prepared by Deutsche Laenderbank or being in its files or otherwise in existence?

(The witness examined the document.)

A. No, I was not aware of such a thing.

Q. I hand you now, Mr. Sturzenegger, Plaintiff's Exhibit 70-20183 and ask you if you have ever seen that document prior to inspection.

(The witness examined the document.)

A. No, sir.

Q. I will ask you specifically, sir, whether you knew of any communication by Deutsche Laenderbank to the Reichsbank on April 1, 1944 regarding foreign exchange request of March 25, 1944 for escudos 17,300,000 in which Deutsche Laenderbank stated to Reichsbank that in accordance with Reichbank's telephone message of the day before Reichsbank had assigned to Deutsche Laenderbank an amount of escudos 10,000,000 on the above referred to claim. Did you know that fact? A. No, didn't know that.

Q. Is that to say you didn't know the communication? A. No, of course not.

Q. And did you know of the fact of such an assignment? A. No, sir.

Q. If it was a fact? Now, I will ask you, sir,

12184 whether Deutsche Laenderbank stated in the same communication or in any other method to Reichsbank that when Reichsbank made their remittance would Reichsbank please advise the Spanish Institute at Madrid separately by telegram that the amounts remitted are intended for the account of Banco Aleman at Madrid? A. No, didn't know such a thing.

Q. And you did not know and do not know of the existence of any facts stated in that letter? Is that right, sir? A. No, sir. Of course not.

MR. SCHWARTZ: Has Mr. Sturzenegger ever met somebody called Reichs Councillor Rolz?

THE WITNESS: No.

MR. SCHWARTZ: Have you heard the name?

THE WITNESS: The name is utterly unknown to me.

MR. SCHWARTZ: In Plaintiff's Exhibit 88 have you ever met Director Janke of the Reichsbank?

THE WITNESS: No, sir.

MR. SCHWARTZ: Ever heard the name?

THE WITNESS: Janke—may have read or heard, but do not know that gentleman.

MR. SCHWARTZ: Reichsbank Councillor Maslowski?

THE WITNESS: No, no idea.

MR. SCHWARTZ: You don't even know the name?

THE WITNESS: No.

12185 MR. SCHWARTZ: Thank you.

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 71-20186 and ask you if you have ever seen that communication or knew of it prior to inspection. A. No, I didn't know it.

Q. Did you know whether Deutsche Ueberseeische Bank so communicated to Deutsche Laenderbank, if it did, on or about April 3, 1944? A. No, I didn't know that.

Q. Did you know any of the events stated in that letter? A. No, sir.

Q. I show you, Mr. Sturzenegger, Plaintiff's Exhibit 72-20197; and ask you if you ever saw that or knew of its existence prior to inspection. A. No, sir.

Q. Did you know or do you know of any of the events referred to in this communication from Laenderbank, if it be such a communication, to Deutsche Ueberseeische Bank on April 5, 1944? A. No, I didn't know of such a thing.

Q. Particularly did you know whether the Deutsche Reichsbank had been asked by the Deutsche Laenderbank to inform the Spanish Institute direct by wire that the aforementioned remittance was intended for Ueberseeische branch

12186 in Madrid? A. I didn't know of such a thing.

Q. I show you next, Mr. Sturzenegger, Exhibit 73-20200 and ask you whether you ever saw that document or knew of its existence prior to inspection.

(The witness examined the document).

A. No, sir.

Q. I ask you specifically whether you knew of any communication by Deutsche Ueberseeische Bank on or about April 6, 1944 to Deutsche Laenderbank. A. No, didn't know that.

Q. Acknowledging receipt of the letter of Laenderbank regarding additional remittance of 7,300,000 escudos to Banco Espirito Santo in Lisbon in favor of the Spanish Institute by way of the Deutsche Laenderbank? A. No, didn't know of such a thing.

Q. I beg your pardon. By way of the Deutsche Reichsbank. A. Didn't know of such a thing.

Q. Or of any of the other facts stated in that letter, if they be facts? A. No, sir.

Q. I show you Plaintiff's Exhibit 74-20212 and ask you, sir, whether you ever saw that document or knew of its existence, if it did exist.

(The witness examined the document.)

A. No, sir.

Q. Prior to the time of inspection. A. No, sir.

Q. I will ask you particularly whether you knew of any statement by Deutsche Laenderbank to Consul Dimanow on or about April 11th to the effect that at the instance of Handels-und Industrie-Kontor, Berlin, Deutsche Laenderbank informed Dimanow that it had remitted for Dimanow at the Banco Aleman, Madrid, by way of the Deutsche Reichsbank, escudos of a total of 17,300,000 to the Banco Espirito Santo at Lisbon in favor of the Spanish Institute? A. Didn't know of such a thing.

Q. Did you know, sir, whether Deutsche Laenderbank at the request of Banco Aleman instructed Deutsche Reichsbank in Berlin to inform the Spanish Institute direct by wire that the above amount was intended for the account of Banco Aleman, Madrid? A. No.

Q. Did you know anything at all about the subject matter of this letter? A. Nothing at all.

MR. WILSON: Gentlemen, you have given two communications the same basic number—20215. I don't think I was aware of whether they were——

MR. SCHWARTZ: What two are you referring to?

MR. WILSON: —interrelated. Communication from Laenderbank to Banco Aleman of April 12th and a communication from Deutsche Laenderbank to the Export Division.

MR. SCHWARTZ: You mean there were two documents under the same number?

MR. WILSON: Yes. I shall deal with both of them, but I must sort of make a documentary amendment for the record.

BY MR. WILSON:

Q. Mr. Sturzenegger, I will hand you what purports to be a communication from Deutsche Laenderbank to Banco Aleman of 12 April 1944, which has been marked 75-20215.

Before I ask you any question about it I shall hand you also a document which at the moment also bears the number 75-20215 which purports to be a communication from Deutsche Laenderbank to this Export Division, Brandenburg in Pomerania, of the same date. Before handing it to you, however, I will ask the reporter if he will amend the document number of this particular document so that it is 75(a).

(The document referred to was marked for identification as Plaintiff's Exhibit 75(a).)

By Mr. Wilson:

Q. Mr. Sturzenegger, I hand you, as I think I have indicated, Document 75(a)-20215, and then I will separate my questions by asking you first if you were aware of the exis-

12189 tence of No. 75 prior to inspection. A. No, didn't see that prior.

Q. And were you aware of the existence of the facts or events, if they were facts or events, referred to in 75? A. They were all unknown to me.

Q. I show you secondly 75(a) and ask you whether you knew of such a communication from Deutsche Laenderbank to this Export Division, Brandenburg in Pomerania, on or about the dates stated. A. No, didn't know such a thing.

Mr. Wilson: Probably that is the explanation, isn't it?

Mr. Schwartz: What?

Mr. Wilson: Off the record—or leave it on the record. That 75 is an enclosure in 75(a).

By Mr. Wilson:

Q. Do you have any knowledge——

Mr. Schwartz: Well, a copy of the enclosure.

By Mr. Wilson:

Q. Do you have any knowledge of the character of the enclosure, if there was an enclosure, in 75(a)? A. No, I have no idea.

Q. Do you have any knowledge as to the manner in which 75 was transmitted? A. No, no idea neither.

MR. SCHWARTZ: The Export Division apparently—that

12190 exports mail—is still at the same address.

MR. WILSON: Are they in the stock exchange?

MR. SCHWARTZ: Still at the same address that they were a couple weeks ago.

MR. WILSON: Probably that is down in the cellar. They're safer there for a while longer.

Your Honor, it's 12:30. May we suspend?

THE MASTER: All right.

MR. WILSON: Gentlemen,—and I guess this ought to be on the record—may we find some method whereby I can have a copy of Plaintiff's Exhibit 88-19715?

MR. SCHWARTZ: Please take the marked one. Well, you of course, photostated it, did you not?

MR. WILSON: No, this is the one which through inadvertence we didn't get.

MR. SCHWARTZ: I'm sorry. Take the marked original.

MR. WILSON: Do you have another one?

MR. SCHWARTZ: No.

MR. WILSON: Why don't we do this? Can the reporter—I'd rather have it in his hands—copy this into the record at this point so that I get the transcript tomorrow, and this can be returned to Mr. Schwartz?

MR. SCHWARTZ: I suppose you want both German and English?

MR. WILSON: Perhaps the best way for me to do it is

12191 to put it on the record when I want to or when Mr. Schwartz does. I will ask the reporter if he will simply as a personal favor make copies of each of them, German and English texts, and let me have them along with the transcript tomorrow morning.

MR. SCHWARTZ: Your Honor, yesterday when I spoke of our view on the whole thing, I said I had a draft memo-

randum. It has since been typed, but the citations and the page references I need to check, and this afternoon is a very wonderful time to do it. May I put it in the record by giving it to the reporter this afternoon?

THE MASTER: All right. It can be lettered "A, B, C," and made an appendix to yesterday's record.

* * *

12195 THE MASTER: Are we ready, gentlemen?

MR. WILSON: Yes, your Honor.

Before concluding the series of escudo documents, I would like to refer to the portion of the transcript which will relate to another subject that I shall take up at some time before we conclude the cross-examination. In connection with the Ruhl matter, in the transcript for April 25, 1950 at page 5465 and the preceding page, page 5464, Mr. Schwartz had shown Mr. Sturzenegger a document out of the so-called Japanese files, and in the colloquy or questions and answers that appear on page 5465 Mr. Sturzenegger said, in the center of the page: "No, I told you already I cannot remember. Could we look up the other cable, because it seems to be in reply?"

"Question: The other cable is not in that dossier.

"Answer: Is not here? It could perhaps make it clearer.

"Question: Perhaps, but it is not here right now anyway."

Mr. Schwartz, I would like to call upon you to let me have the copy of the cable or if you will identify it, the one which you say you do not have here "right now anyway."

MR. SCHWARTZ: Oh, Mr. Wilson, I'm sorry you misunderstood. I'm right, am I not, it was not in those two books?

MR. WILSON: That's right.

12196 MR. SCHWARTZ: Then we don't have it. I meant "right now anyway" in the sense that we would seek to find such a thing from Japan. We showed you, and I hope I made it very clear, everything that came from Japan.

MR. WILSON: I see. All right.

THE MASTER: Before you start, Mr. Wilson, I might state that over the weekend I looked into the Government's authorities and other authorities on the matter of leading questions on cross-examination, and I came to this conclusion:

The Government has objected to the use of leading questions in cross-examination of Mr. Sturzenegger by his own attorney. The basis of this objection is that Mr. Sturzenegger was examined by the Government, on discovery, under the provisions of Rule 26(c) of the Rules of Civil Procedure which incorporates by reference Rule 43(b) providing that "a party may call . . . an officer, director or managing agent of a private corporation . . . and interrogate him by leading questions:" It is urged that Mr. Sturzenegger is, in the nature of things, sympathetic to Plaintiff and that under these circumstances there is not only no necessity for cross-examining him by leading questions but that it would be prejudicial to do so.

It is admitted by both sides that there are no authorities precisely in point. However, Wigmore(Vol 3, Sec. 773, pp. 130-131; Sec. 1887, p. 539) cautions, in general,

12197 against the use of leading questions, excusing them on cross-examination on the ground that the witness being adverse, his presumable bias removes all danger of improper suggestion by the use of leading questions. He states, however, that where the reason ceases, the rule ceases also:

"Thus when an opponent's witness proves to be in fact biased in favor of the cross-examiner, the danger of leading questions arises and they may be forbidden."

Both Wigmore and Jones' Evidence, Sec. 824, state that use of leading questions on cross-examination is in the discretion of the court. Jones states the rule as follows:

"But, although it is the undoubted rule that leading questions may be asked on cross-examination, the rule is

subject to the qualification that the court, in its discretion, may restrict the right, where the witness shows a bias in favor of the cross-examiner."

Both treatises above referred to were written prior to the Federal Rules of Civil Procedure. Entirely aside from the Government's right under Rule 43(b) to lead the present witness, the object of Rule 26 was to afford liberal discovery in which, as is well known, leading questions are allowable on direct examination. It would appear, other factors being absent, that an equal latitude should be allowed on cross-

12198 examination. The right of cross examination is firmly imbedded in our law as part of the concept of due process; any undue restriction of the right might involve risk of serious error without any comparable benefit.

I am impressed by the law cited by defendant's counsel to the effect that there is danger in wholesale use of leading questions. However, I am equally impressed by the fact that up to now plaintiff's counsel in his cross-examination of the witness has been punctilious in avoiding leading questions. I am reluctant, therefore, to make a general ruling. I think that while I have power under Rules 26 and 43 and the authorities cited to prevent abuse by improper use of leading questions, there is no showing at this time of any such situation. There being no pending question as to which objection is made, on the ground stated, I think the proper course is to proceed with the above principles in mind, with the thought that cross-examination should, in the nature of things, be as unfettered as possible. In the event the Government feels that leading questions are being utilized to its prejudice, it may make objection thereto at the time, in which event I will make a ruling in the light of the particular question asked and the facts and circumstances as they then appear.

* * *

12199 BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you Plaintiff's Exhibit 76-20222 and ask you, sir, if you ever saw this before inspection.

(The witness examined the document.)

A. No, I didn't see it before inspection.

Q. Are you or were you aware of any of the facts or statements contained in this letter from Banco Aleman to Deutsche Laenderbank dated April 14, 1944? A. No, I was not.

Q. I show you Plaintiff's Exhibit 77-20259 and ask you if you will examine that and state whether you ever saw it before inspection.

(The witness examined the document.)

A. No, I didn't see it before.

Q. And have you ever received any information directly or indirectly about such a communication from Deutsche Laenderbank to the Deutsche Reichsbank? A. No, I have not.

12200 THE MASTER: Has that got an exhibit number?

MR. WILSON: Yes, sir. 77-20259.

Mr. Schwartz, would you be kind enough to look at the next exhibit, 78-20330, and inform me as to the source of that exhibit?

MR. SCHWARTZ: As in the case of the others, there is the usual stamp on the back here, with the address "Laenderbank, 78 Unter den Linden, Berlin," that appeared on the others.

MR. WILSON: Thank you.

BY MR. WILSON:

Q. Mr. Sturzenegger, the exhibit whose number I just stated in my inquiry to Mr. Schwartz is handed you herewith. Can you state whether you ever saw that before?

(The witness examined the document.)

A. No, I haven't.

Q. I will ask you specifically if you knew of any such communication by the Deutsche Ueberseeische Bank or any of its officers or employees to Deutsche Laenderbank or to anyone else regarding the message referred to therein. A. No, I didn't know that.

Q. Or whether the Deutsche Laenderbank or anyone else transmitted the aforementioned message to Consul Dimanow by telephone or otherwise? A. Didn't know such a thing.

Q. I show you next Plaintiff's Exhibit 79-20338 and

12201 ask you if you have seen that before, sir.

(The witness examined the document.)

A. No, I haven't seen it before.

Q. Mr. Sturzenegger, do you know or did you know of any communication from Handels-und Industrie-Kontor on or about June 2, 1944 to Deutsche Laenderbank regarding apparently an additional remittance of 3,500,000 escudos? A. No, didn't know that.

Q. Did you know before reading the documents at inspection or afterwards what the purpose was of the remittances of the 10,000,000 and the 7,300,000 escudos? A. No, had no idea.

Q. Did you know the purpose of this additional remittance of 3,500,000 escudos? A. No, sir.

Q. Specifically, did you know that it was for the purpose of purchasing 1200 tons of tin slag from Portugal? A. No idea.

Q. I should ask you the same question about the transaction in which you were momentarily involved in the summer of 1943. Did you know for what purpose the money was transmitted to Spain and Portugal, respectively? A. No. No, I didn't know that.

Q. Did you know any of the facts set forth in this Exhibit 79?

12202 A. No, sir.

Mr. Schwartz: With your permission, Mr. Wilson, may I——

Mr. Wilson: Go ahead.

Mr. Schwartz: Mr. Sturzenegger, you have testified that you did not remember these various phone calls that Exhibits 11, 12, 13, 14 and 15 show that you had with Mr. Moser and Laenderbank. Is that right?

The Witness: Well, I cannot remember now how exactly my statements were. I mean I couldn't remember them individually. After you had showed me some internal memoranda I didn't dispute the fact that probably telephonic discussions have taken place.

Mr. Schwartz: I understand. But I think I'm right, after having reread the record several times, in saying that although you were convinced that the document was honest——

The Witness: Yes.

Mr. Schwartz: —and signed and so on, you still didn't remember the phone calls.

The Witness: No, not the individual calls.

Mr. Schwartz: Right. So you do not remember what was said in those phone calls other than as you have seen the memorandum?

The Witness: No.

Mr. Schwartz: Then when you say you did not know the fact that this was fin or 1200 tons, do you mean that you

12203 definitely remember that you never were informed in telephone conversations or otherwise that this had to do with tin? Or do you mean that you can't remember whether you were informed or not?

The Witness: To the best of my recollection I was not informed, because all I knew about was contained in this

letter which was addressed to us by the Deutsche Laenderbank on July 17th or 19th.

MR. SCHWARTZ: 16th or 19th. But you say you can't remember the phone calls. So, of course, you can't remember what you said and what was said to you in the phone calls?

THE WITNESS: No, of course not, but I mean——

MR. SCHWARTZ: All right.

THE WITNESS: —if such a thing would have been mentioned, may be it would have stuck to my memory. I cannot recollect it.

MR. SCHWARTZ: You think "tin"——

THE WITNESS: No.

MR. SCHWARTZ: —is a significant enough word or thought so it would have stuck in your memory?

THE WITNESS: I feel rather sure that I was not informed. I mean I cannot remember anything about such a thing.

MR. SCHWARTZ: All right. I would just like to call attention for the record to the fact that the two foreign

12204 exchange certificates mentioned in this exhibit, 79-20338, are very closely related with the others we have seen before. The first one mentioned is XII/Z4/345/4, and, as the text indicates, it has to do with a further installment payment on the amount of tin. But the second one mentioned is XII/Z4/345/1, which apparently was the basic certificate permitting the purchase of the gross amount of tin, and it is that basic certificate, XII/Z4/345/1, which is cited in Exhibits 5 and 9 relating to the beginnings of the transaction.

It would seem at least to me clear that at least in so far as the record on foreign exchange certificates was concerned that it was all related to the first foreign exchange certificate which called or permitted money to be sent to Mr. Sturzenegger.

MR. WILSON: My failure to controvert that is not to be

taken as an acquiescence in it or as a stipulation that what Mr. Schwartz said is correct.

Is that all you have for the moment, Mr. Schwartz?

MR. SCHWARTZ: Yes.

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 80-20356. Will you look at that and state whether you ever saw it before.

(The witness examined the document.)

12205 A. I haven't seen it before inspection.

Q. Now, specifically, Mr. Sturzenegger, did you know or have you any information aside from having read this letter that on or about June 12, 1944 Deutsche Laenderbank informed Deutsche Ueberseeische Bank in Berlin that it—that is to say, Deutsche Laenderbank—made a remittance of 3,500,000 escudos to Deutsche Ueberseeische's branch in Madrid, to the Banco Espirito Santo at Lisbon in favor of the Spanish Institute through the Deutsche Reichsbank? A. I didn't know all that.

Q. Or did you know any of the other facts stated in that letter? A. No, nothing at all.

Q. I show you Plaintic's Exhibit 81-20357 and ask you whether you ever saw that letter before.

(The witness examined the document.)

A. No, I didn't see it before.

Q. Did you know of any such communication by Deutsche Laenderbank on June 12, 1944 to Deutsche Reichsbank in reference to the foreign exchange covering escudos 3,500,000 in which Deutsche Laenderbank requested Deutsche Reichsbank to inform the Spanish Institute separately by wire that the Reichsbank's aforementioned remittance is intended for the account of the Banco Aleman at Madrid? A. No, I didn't know such a thing.

12206 Q. I show you Plaintiff's Exhibit 82-20358, sir, and ask you if you ever saw that before.

(The witness examined the document.)

A. No, I didn't see it before.

Q. Specifically, did you know or were you informed of any of the contents of this letter from Deutsche Laenderbank to Dimanow dated June 12, 1944? A. No, was never informed.

THE MASTER: Off the record.

(Discussion off the record.)

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Exhibit 83-20359 and ask you if you ever saw that before inspection.

(The witness examined the document.)

A. No, I didn't see that.

Q. Did you know that on or about June 13, 1944 Deutsche Laenderbank sent to Handels, etc., or rather returned to Handels, etc., a foreign exchange certificate number XII/Z4/345/4 of 5/26/44? A. No, I didn't know that.

Q. I show you Plaintiff's Exhibit 84-20360 and ask you if you ever saw that before, sir.

(The witness examined the document.)

A. No, I haven't seen it before.

Q. Did you know of any of the contents of this letter

12207 of June 13, 1944 from Deutsche Ueberseeische to Deutsche Laenderbank or of any of the facts stated therein, if they are facts? A. No, sir.

Q. I show you Plaintiff's Exhibit 85-20372 and ask you if you ever saw that before inspection.

(The witness examined the document.)

A. No, didn't see it before.

Q. Did you know any of the details of that communication from the Reichsbank to the Laenderbank? A. No, sir.

MR. WILSON: Mr. Schwartz, is the apparent source of Exhibit 86-20388 Laenderbank?

MR. SCHWARTZ: Have you just passed that one or is that coming up now? Because I have a different one in front of me.

MR. WILSON: That's next.

MR. SCHWARTZ: 20388 has on the back of it the same information as has appeared on the others—Laenderbank, 78 Unter den Linden.

BY MR. WILSON:

Q. Mr. Sturzenegger, I show you Plaintiff's Exhibit 86-20388 and ask you if you have ever been aware of this document being in the files of Laenderbank or otherwise being in existence?

(The witness examined the document.)

12208 A. No, sir.

Q. Or whether you knew of any of the facts stated therein, if they are facts. A. No, didn't know that. No.

MR. WILSON: Mr. Schwartz, is the next exhibit, 87-20597, also one which was found apparently in the Laenderbank files?

MR. SCHWARTZ: Yes, sir. The same stamp and the same information on the back as in the case of most or all of these.

BY MR. WILSON:

Q. Mr. Sturzenegger, I hand you a document which has been marked Plaintiff's Exhibit 87-20597 and which apparently was found amongst the files of Laenderbank in Berlin. Will you look at it and let me ask you first whether you ever saw that sheet before inspection?

(The witness examined the document.)

A. No.

Q. Now, I direct your attention to the lefthand side of the sheet which mentions Swiss francs 1,294,219 and escudos 9,803,921.50. I will ask you whether you were contemporaneously aware of any transactions between Laenderbank and Handels, etc., as of the date set opposite those figures, namely,—what is it? January 26 and January 25, respectively, 1944?

12209 A. Yes. No, was not aware of that.

Q. Whereas below that item are items bearing dates subsequent to that date, I notice above the item is a date of July 17, 1943. Do any of the figures opposite that date mean anything to you at all, Mr. Sturzenegger? A. No, sir.

Q. They do not? A. No.

Q. Now, by way of recapitulation, I refer you to the three items below the figures which I called to your attention a few moments ago. Do you have any familiarity at all except as you have seen in these documents with those items? A. No.

Q. Mr. Sturzenegger, I hand you Plaintiff's Exhibit 88-19715, although I think Mr. Schwartz—I'm sure Mr. Schwartz has shown you this document before, and ask you whether you ever saw this document prior to the other day, according to your best recollection.

(The witness examined the document.)

Before you answer that and while you are looking at it, I will hand his Honor a copy of the document which the reporter has been kind enough to prepare. Mr. Schwartz, I am going to hand you both a German text and an English translation of the same document as made by the reporter.

MR. SCHWARTZ: Thank you.

12210 MR. WILSON:

Q. Mr. Sturzenegger, have you read that? A. I have read it.

Q. I think perhaps Mr. Schwartz asked you the ques-

tions that I would have asked you about it. Did you know of any discussion with the Reichsbank on the morning of July 16, 1943— A. No, sir.

Q. —regarding the transaction having to do with the transmittal of escudos and francs to Spain and Portugal? A. No, didn't know such a fact.

Q. And I think Mr. Schwartz asked you did you know Mr. Janke. A. Didn't know him.

Q. Did you know the name? A. The name in some way I think I stated is known to me. I do not know the gentleman. I have never seen him.

Q. And the name Mr. Maslowski? Does that mean anything to you? A. No, nothing at all.

Q. Mr. Sturzenegger, to your knowledge had you ever dealt with the Banco Espirito prior to the incident that you have testified to? A. No, not to my knowledge.

Q. And I think it has been established you did not
12211 have an account there? A. Yes, that's right.

Q. Prior to this event? A. Yes. We didn't have.

Q. Mr. Sturzenegger, will you state whether you recall having been informed contemporaneously with the events in the summer of 1943 by any German person or anyone acting for a German person or entity expressly that this transaction should be cloaked as much as possible? A. No, do not recall such a thing.

Q. Do you remember any statements from anyone expressly to that effect? A. No, sir.

Q. Do you recall anything from which you inferred that cloaking was involved in the situation? A. Well, I mean— and I think I have stated that on a prior deposition day— that the whole circumstances connected with this request didn't seem to be very normal and natural. I mean the fact that this letter was delivered through the Consulate. I mean too the content of this letter where it is stated after carrying through report by a certain formula. And I refer too to this funny clause I think at the end of this letter: "Do not mention the content of this letter or the matter

even to"—how it was?—"German friends," or something like that. I mean all that didn't, as

12212 I stated, seem to me very natural, and therefore my reaction was negative and, as it has been proved,——

THE MASTER: By "negative" you mean "adverse"? Is that right?

THE WITNESS: Yes, that's it. Yes. I didn't like the whole matter, and therefore I didn't execute it—the request.

MR. WILSON: Thank you.

Now, if your Honor please,——

MR. SCHWARTZ: With your permission may I——

MR. WILSON: Go ahead.

MR. SCHWARTZ: Mr. Sturzenegger,——

MR. WILSON: If you're going to cross-examine about this general subject——

MR. SCHWARTZ: No, just this exhibit.

MR. WILSON: Okay.

MR. SCHWARTZ: I have been trying to put questions there in pursuance to the Master's suggestion that cross might be more clear if it were directly to the point.

Mr. Sturzenegger, among the things that suggested to you that this transaction was not natural and normal, your words a moment ago, did you include the business of attempting to have it done through a Liechtenstein bank and through blank checks for escudos? Are those among the circumstances you regarded as not natural and normal?

12213 THE WITNESS: That was not requested. I mean I referred to the request as it was submitted to us.

MR. SCHWARTZ: But you thought the whole transaction was not natural and normal and you gave some of the reasons. Now, among the reasons that made you think it was not natural and normal did you feel that the bank checks for the escudos and the effort to have it done through a

Liechtenstein firm, were those too among those circumstances?

THE WITNESS: No, I wouldn't say that. I mean, as you know, there were apparently discussions afterwards, and the proposition as is always the case in business life was not just bluntly declined. The matter was discussed. But I mean the final result counts, and the result is that we didn't pay the sum to Consul Dimanow without mentioning Laenderbank's name.

MR. SCHWARTZ: On this Mr. Wilson asked you, as you recall, of course, whether anybody mentioned cloaking to you, and obviously his questions were motivated by the mention of cloaking in this exhibit that you have in front of you. Now, you note that that exhibit is dated July 16, 1943.

My first question is: Do you know whether that has anything to do with the morning or the afternoon of July 16, 1943?

THE WITNESS: That I have no idea. What's your question? You mean the date?

12214 MR. SCHWARTZ: Do you know whether this exhibit and the meeting referred to here has anything to do with the morning as distinguished from the afternoon?

MR. WILSON: I object to that question until I understand whether it is predicated upon the fact that I asked about the morning.

MR. SCHWARTZ: That was what it was motivated by.

MR. WILSON: Well, I read that from the exhibit.

MR. SCHWARTZ: I'm sorry.

MR. WILSON: Look in the first two or three lines.

MR. SCHWARTZ: You're perfectly right.

MR. WILSON: I had no motive other than to paraphrase the exhibit.

MR. SCHWARTZ: Oh. You don't remember anything about the morning or afternoon of July 16, 1943, do you, Mr. Sturzenegger?

THE WITNESS: Cannot remember.

MR. SCHWARTZ: I call your attention to our Exhibit 4-19717. Will you note the date, July 19th, and the reference in the opening words to a telephone conversation of July 16th?

(The witness examined the document.)

MR. SCHWARTZ: Please don't bother with the English unless you feel you want to.

MR. WILSON: We see that. Now what's your question, Mr. Schwartz?

12215 MR. SCHWARTZ: Does the witness see it, Mr. Wilson? Let me ask him. We see it.

Do you see the thing I called your attention to? It says, "We refer to our telephone conversation of the 16th instant in which we requested you to give us the name of your correspondents in Madrid and Lisbon for a transaction that may be expected."

THE WITNESS: I see that from the letter.

MR. SCHWARTZ: Do you remember anything about that telephone conversation?

THE WITNESS: No. I think that I was absent then. I think so.

MR. SCHWARTZ: Oh. The vacation that you went on which prevented you for a while from going down to the Consulate began before July 16th?

THE WITNESS: I believe so. I'm not certain about the dates. But I think so.

MR. SCHWARTZ: In rechecking this transaction and discussing with your people as to what they knew and what you knew and what each of your participations in it was, you haven't verified as to when you were away?

THE WITNESS: No, I haven't.

MR. SCHWARTZ: I see. So you don't know whether that telephone conversation was with you or another member of your firm?

12216 THE WITNESS: No, I don't know. I mean I cannot remember it. I think I was away then.

MR. SCHWARTZ: So of course you don't know what you or that member of your firm was informed of during that telephone conversation?

THE WITNESS: No, but from what I have heard and what the letter purports to refer to, I think——

MR. SCHWARTZ: Please answer the question, Mr. Sturzenegger. Leave the argument to Mr. Wilson.

THE WITNESS: I see.

MR. SCHWARTZ: You don't know what the person at your end of the wire was informed of during that telephone conversation?

THE WITNESS: No, cannot remember it.

THE MASTER: Mr. Schwartz's question re you or any member of your firm might be clarified. Is it of record so far whether anyone else of your firm participated in this transaction?

THE WITNESS: What do you mean by participate?

THE MASTER: Did anyone else of your firm participate in this transaction that you recall?

THE WITNESS: Yes. There were apparently calls also with Werder, and Werder normally carries through the technical business. He is a prokurist, who has been collaborating since many years. Then there was still there Haller, still alive,

12217 and he was too I think occupied with the matter.

MR. SCHWARTZ: Do you know that or is that your——

THE WITNESS: That's my vague recollection.

MR. SCHWARTZ: When you checked into this thing after the last deposition session last February, did you learn that both Mr. Werder and Mr. Haller had participated in this?

THE WITNESS: Well, I think Werder must be, because there were telephones where I was on vacation. I don't think that another one except Haller or Werder could have then been on the telephone. It's more conclusion.

MR. SCHWARTZ: Well, did you learn definitely when you

asked them what had gone on so that you could be informed here who it was who knew what and who it was who had done what?

MR. WILSON: Haller was dead, wasn't he, by that time?

THE WITNESS: At that time not yet.

MR. WILSON: When did Haller die?

THE WITNESS: I think in 1946 or——

MR. WILSON: I mean he was dead when you returned to Switzerland?

THE WITNESS: Yes, of course. I mean not at that time the transaction took place.

MR. SCHWARTZ: I am not asking you who you asked but who did you learn had participated in this matter?

THE WITNESS: Well, Werder.

MR. SCHWARTZ: Did he say he had participated?

12218 THE WITNESS: Well, not to what extent, but he did participate. I mean he had to do, to handle this technical transaction as giving credit, debit advice and those matters.

MR. SCHWARTZ: Well, did he say that he had had to do with this transaction?

THE WITNESS: No, I cannot now remember exactly how it was. I discussed with him, and he said, "Well, it has been made so and so. We have"—that I remember well—"We have first when we received the money credited Laenderbank and then afterwards when we transferred the money back to Laenderbank at the bank they requested we debited them." That I have talked over with him."

MR. SCHWARTZ: I see. Did he say that it was he who had had the telephone conversation on the 16th referred to in this letter of July 19th?

THE WITNESS: No, no, but I didn't ask him these specific questions.

MR. SCHWARTZ: You didn't ask anybody in your firm which of them had had telephone conversations other than you?

THE WITNESS: No.

MR. SCHWARTZ: All right.

THE MASTER: What is the origin of this Exhibit 88? Is that already of record?

MR. WILSON: Turn it over on the back, your Honor.

(The Master examined the document.)

12219 THE MASTER: I see.

MR. SCHWARTZ: Your Honor, Mr. Wilson's questions on the origin need a word of footnote. Mr. Wilson, of course, examined the document which shows this stamp. Either he could have made a note of it, I suppose, but in the normal photostating it would not show up. However, when we have introduced a document as in effect we did here by giving Mr. Wilson our only copy, the stamp appears, so the stamp and the information appear I think in almost every case where a document has been introduced. The circumstance of Mr. Wilson having introduced the photostated copies means that doesn't produce the stamp in every case.

MR. WILSON: In all this colloquy the record will not show what is the source. May I announce the source is Deutsche Laenderbank?

MR. SCHWARTZ: Sure. It's like all the others. Deutsche Laenderbank, 78 Unter den Linden.

MR. WILSON: Now, I would be very glad if you gentlemen wish it to have the reporter mark his typewritten copies of this document as appendages to the deposition rather than to take your only copy.

MR. SCHWARTZ: No, no. We prefer that that one be the official thing, because in every case where we have introduced a document it has been the equivalent of that one that has been introduced.

12220 MR. WILSON: Now I am going to the subject of a certain series of questions asked by Mr. Schwartz in Volumes 9 and 10, being the dates of February 14th and February 15th, 1949. The purpose of this line of inquiry is to ask the witness about probably a dozen questions

where at the time he was not in a position categorically to deny some event having to do with South America.

MR. SCHWARTZ: Pardon me. Is that South America in this connection or generally?

MR. WILSON: What do you mean "in this connection"?

MR. SCHWARTZ: In connection with this transaction we have been talking about.

MR. WILSON: No. I am leaving the Swiss francs and escudos.

MR. SCHWARTZ: In that case I wonder if we couldn't agree that we could cross on the escudo and Swiss franc transaction? It won't take long at all, and it will serve the purpose that it will give in the record the entire cross and redirect.

MR. WILSON: I object to it, your Honor. I thought that the formula was that I was to be able to complete my cross-examination, and I thought that Mr. Schwartz had acquiesced in that. I don't mind these few interruptions, but I submit that——

THE MASTER: Well, you may recall I suggested the other

12221 day that maybe while the matter was fresh in our minds it might be possible to cross-examine or redirect-examine as to any given transaction. However, it's up to you gentlemen. If you feel it would break into the continuity of your cross-examination, Mr. Wilson, I will have to leave it up to you.

MR. SCHWARTZ: Let me attempt to persuade Mr. Wilson. The entire redirect, Mr. Wilson, won't be much more than a little piece of redirect that I interposed on any particular exhibit. Both of us would have to dredge up from our memories—if such redirect were postponed, both of us would have to dredge out the old stuff. You are, I am sure, better prepared now to discuss that than an hour from now or three days from now necessarily. And we all of us have it in mind. I think the witness, you, I and the Master could all appreciate it all the better if it went now.

MR. WILSON: Of course, I might have said the same thing with respect to your examination. Maybe I would have been better off.

MR. SCHWARTZ: But my redirect is of so short a compass that it hardly deserves such postponement—say maybe three days—before we come back to it by the schedule.

MR. WILSON: Without holding you literally to your statement, what do you mean by "short compass"?

MR. SCHWARTZ: Probably half an hour, 20 minutes.

12222 MR. WILSON: I am willing to try this out, your Honor.

THE MASTER: Very well then.

MR. SCHWARTZ: May we have a five-minute recess?

THE MASTER: Yes.

MR. WILSON: By the way, your Honor, I would like another recess this afternoon to complete further study of the Kaufman matter. It is on for argument before Judge Tamm at ten o'clock tomorrow morning, and I have additional work to do.

THE MASTER: Is there any objection?

MR. SCHWARTZ: I have no objection, but I sure am unhappy, because I worked about 25 hours over the weekend preparing for Tuesday morning, thinking that we would be on today, and if Mr. Wilson had told us that he would want this afternoon too, I could have had more sleep over the weekend.

MR. WILSON: May I say that I have worked 25 hours too.

MR. SCHWARTZ: I didn't mean to match it. I only meant I could have allowed myself some working time this afternoon.

(Thereupon, a brief recess was taken.)

BY MR. WILSON:

Q. Mr. Sturzenegger, with respect to the series of exhibits that I showed you beginning with about 18 and going to the conclusion or going through 87, because chronologically those go up to June of 1944, if your firm had been

either involved in those subsequent remittances or asked to participate in those subsequent remittances, in the very nature of

12223 things would those matters have come to your attention? A. Oh, yes.

Q. And by way of confirmation, did they come to your attention? A. No, they didn't.

MR. WILSON: Does that cover the point you had in mind, your Honor?

THE MASTER: Yes.

MR. WILSON: Now, Mr. Schwartz.

* * *

12243 Q. Now, coming to Volumes 9 and 10, being February 14 and February 15, 1949, I want to start with [R. 7651]. You were being interrogated by Mr. Schwartz with reference to an exhibit which had been previously marked, in which some German official of Farben had stated: "We have asked Dr. Sturzenegger to promise him"—that is Auer—"a yearly salary (retainer) of between Swiss francs 1,500 and Swiss francs 2,000."

MR. SCHWARTZ: Pardon me. The exhibit in which that appeared?

MR. WILSON: It's probably 22, because that appears to be the next preceding identification.

BY MR. WILSON:

Q. On that page Mr. Schwartz asked you the question: "Do you remember anything about being asked to give or giving Dr. Auer a yearly salary or retainer of some such amount?"

Answer: "No, I do not recollect it, and I don't think that we have given him, but I couldn't swear to it without having had recourse to the files. I don't think so."

I want to ask you, Mr. Sturzenegger, what is your

12244 present answer to that question? Did you give any such salary to— A. No, we haven't given him any salary in this connection.

MR. SCHWARTZ: Is that based on recourse to the files, as I gather it is?

THE WITNESS: Well, I have ascertained it in the meantime in Basle.

MR. SCHWARTZ: From examination of the files by yourself?

THE WITNESS: Well, I haven't examined the files myself. I had no time to do all such matters. But I relied on Werder's statement. He checked, and he seems to be a reliable man so I have no doubt about it.

THE MASTER: Well, you asked him, Mr. Wilson, whether in point of fact he actually paid him a salary of 1,500 or 2,000 francs? Is that it?

THE WITNESS: That's my answer.

MR. WILSON: You say did I ask him that?

THE MASTER: Yes.

THE WITNESS: My answer was to that.

BY MR. WILSON:

Q. Your answer is "no"? A. Was "no." Yes. As to the question referred to before of Mr. Schwartz's, whether I have been asked, that I do not recollect. That may have been the case.

12245 THE MASTER: In Defendants' Exhibit 22 it says, "We have asked Dr. Sturzenegger to promise him a yearly salary."

THE WITNESS: No.

THE MASTER: Of 1,500 or 2,000 francs. You didn't do that? Is that right?

THE WITNESS: No.

MR. SCHWARTZ: Didn't promise or didn't pay him?

THE WITNESS: Both. Neither.

BY MR. WILSON:

Q. Now, on [R. 7727], which is in the volume of February 15, 1949, the question was asked:

"Can you say definitely and clearly and without any qualification that you or your firm did not participate in any money arrangements in connection with the Auer transaction? "

Answer: "I do not want to be evasive at all. Only considering the fact that it lays far back and, well, my memory is not always so exact, I just couldn't swear to it. But it's my best recollection that we were not involved."

Now, Mr. Sturzenegger, what is your present answer to that question? A. It confirms my then recollection. We haven't been involved.

MR. SCHWARTZ: Are we turning to another point, Mr. Wilson?

MR. WILSON: Another page.

12246 MR. SCHWARTZ: Another point of fact? Then may I ask about that——

MR. WILSON: I'd rather that you saved these until I dispose of these denials which are all related to the same general picture of South America.

THE MASTER: The Auer matter?

MR. WILSON: Yes, sir.

BY MR. WILSON:

Q. I want now to begin reading from [R. 7761] of the record. Mr. Schwartz asked you the question, Mr. Sturzenegger:

"I didn't ask you specifically about Hamers and Marquardt there because it was so difficult to make out the penciling, but now we have this in typewriting it is perfectly clear. It purports to say that you saw no difficulties in assuming a guarantee of the rate of foreign exchange in the form provided in the cases of Hamers and Marquardt. Now, what about that, Mr. Sturzenegger?"

You answered: "Well, I again must say I have no recollection. It lays far back. In the details—discussion—

anything may have come up in the discussion. I do not recollect having taken over such a guarantee. I may be mistaken, but I don't believe that."

Question: "Yes. What do the names Hamers and Marquardt mean to you?"

Answer: "Nothing."

12247 Question: "Nothing at all?"

Answer: "Nothing at all."

Question: "Do you place them in any context?"

Answer: "Well, after having read these memos and letters and so on, it seems to me that these two belonged in some way to one or the other of the South American companies, but that is a conclusion."

Question: "It doesn't say that. It just says you saw no difficulties in assuming a guarantee of the rate of foreign exchange in the form provided in the cases of Hamers and Marquardt."

Answer: "It doesn't say more than that. Now, what is the pending question?"

Question: "Now, how do you conclude or have any feeling about there being Hamers and Marquardt—about Hamers and Marquardt being in this South American group?"

Answer: Well, we had the name here in the pencil writing."

Question: "On Exhibit 24?"

Answer: "That makes me assume that."

Question: "I see. What is such a guarantee of the rate of foreign exchange, Mr. Sturzenegger?"

Answer: "Well, in my opinion, it can be a guarantee against a possible depreciation of a special currency. Yes, I think that covers it roughly."

12248 Question: "And can you tell us what connection such an agreement might have had with the Auer matter?"

Answer: "No, that would be pure guessing."

Question: "Uh-huh. You can't be sure, can you, that you did not take over such guarantees?"

Answer: "I can only state, according to the best of my recollection—it lays far back and the whole thing was then not considered as very important—I do not remember all details and phases of the discussions."

Now, Mr. Sturzenegger, what is your answer to the question as to whether you did take over such a guarantee? A. We didn't take over any such guarantee in this connection.

Q. Now, turning to [R. 7772]—Suppose I start near the bottom of [R. 7771].

Question: "So do you remember anything about a request to Chemie that it provide you with backing so that you could help finance the Auer transaction?"

Answer: "No, I do not recall any such thing."

Question: "Earlier I was asking you about money but I was asking you whether you put up backing so that another bank could finance it."

Answer: "Yes."

I mean the "yes" was obviously that you were hearing the question.

12249 Question: "Taking it backwards, backing that you received, did you receive backing from either Farben or Chemie for the purpose of having anything to do with these transactions?"

Answer: "Not to my recollection."

Question: "Again there, you couldn't swear to that?"

Answer: "No, I couldn't. It lays eight or more years back and I, of course, try to give you the best of my recollection, but I cannot swear."

Now, Mr. Sturzenegger, can you at this time unequivocally state whether or not backing was received by you from either Farben or Chemie for the purpose of having anything to do with the transactions referred to by Mr. Schwartz? A. Yes, I can. My recollection was right. We

have not received backing from Chemie or Farben or somebody else.

Q. I want now to ask about a question and answer on [R. 7778]. The question is:

"So you can't know, for instance, whether he might have been a stockholder in any of these South American firms?"

The answer was: "I have no idea."

The "he" obviously refers to Dr. Linck of Buenos Aires.

The question with which I am concerned then follows:

"You don't remember ever having granted him any loans?"

Answer: "No, I don't think so."

Question: "But do I take it that you couldn't swear that

12250 you hadn't granted him any loans?"

Answer: "Well, you always ask me this question. I can only swear that I have tried to give the best of my recollection, but that's all. And obviously my recollection as to the details of these discussions which took place so long ago is—I regret it is—this vague."

Now, Mr. Sturzenegger, how would you answer the question today as to whether your firm granted Dr. Linck any loans? A. No such loans were granted by my firm to Dr. Linck.

THE MASTER: Now, I assume that that answer is as a result of an interim check made in Switzerland? Is that right?

MR. WILSON: Your Honor, I should have brought that out. I appreciate it.

THE WITNESS: That's correct.

MR. SCHWARTZ: A check by Mr. Werder, no doubt?

THE WITNESS: Yes.

By Mr. Wilson:

Q. On [R. 7785]—

Mr. Schwartz: It's hearsay, isn't it, Mr. Wilson? Mr. Werder told him that.

Mr. Wilson: I shall let you draw any conclusions you want to on that matter, Mr. Schwartz.

Mr. Schwartz: All right. I take it, your Honor, that the ruling on leading questions calls for objection as we see

12251 fit to make them, but it still is untouched by your ruling that statements by Mr. Sturzenegger which are not admissible in evidence are inadmissible and will be inadmissible for all time.

The Master: Well, that naturally follows. If his statement has no probative value, why it will naturally appear.

By Mr. Wilson:

Q. Mr. Sturzenegger, I refer now to [R. 7785].

Question: "Now, this is dated after the Exhibit 25. Does it help you to remember that the discussions as to loans or you giving backing through a Swiss bank or any money question involving the South American affair continued beyond the time that von Rospatt and the other gentleman called on you?"

Answer: "No, doesn't help me, Mr. Schwartz."

Question: "Does it help you to remember anything at all about the money aspect of the South American situation?"

Answer: "No. On reading this I am asking me whether really some transactions of this kind have been carried through through my firm. When you questioned me this morning I said to the best of my recollection I can not believe that something has been done. And that hasn't changed. Seems to be a suggestion, but I cannot recollect that this transaction has been carried through."

The Master: Does that still refer to the Auer transaction.

12252 Mr. Wilson?

MR. WILSON: I must go back, your Honor, and establish that. Mr. Sturzenegger read this preliminary detail, but I have not at this moment read it.

Mr. Schwartz was interrogating about Exhibit 26-12973. Then he reads some or all of its contents. And I shall read what he read, beginning on [R. 7782]. It's dated April 17, 1940, and it's re South America; Pool Agreement/Loan.

"In accordance with the memo of March 13 of this year, section 2(a), a bank in Switzerland shall grant a credit to the shareholder. The shareholder shall use this credit to repay his loan at the I. G. But as the bank is not supposed to learn of this purpose, the shareholder should only instruct the bank to remit the credit amount in his favor to the banking house Sturzenegger & Cie. The banking house Sturzenegger & Cie., Basle, would, in advance, declare its willingness towards the bank to leave an equal amount at the bank. The I. G., in its turn, would likewise leave the amount credited to it by the firm Sturzenegger & Cie. for repayment of the loan debt of the shareholder with the firm Sturzenegger & Cie.

"In order to carry out the aforementioned transaction, it should suffice if the Swiss Bank writes to the individual shareholders as per enclosure. In case a shareholder with loan changes, the new shareholder would open a credit with

12253 the Swiss bank and ask same to remit the credit amount for his account to the firm Sturzenegger & Cie., Basle. Then he would instruct the firm Sturzenegger & Cie. to credit the amount to the trustee for the acquisition of the shares. The trustee would make use of this amount by remitting it to the Swiss bank via the firm Sturzenegger for account of the selling shareholder. In this manner, a new shareholder with loan would take the place of the old shareholder with loan without actual movement of money.

"If a shareholder takes the place of a shareholder with loan who acquires the shares out of his own funds, the new shareholder would remit the purchase price to the trustee, and the trustee would make use of this amount by transmitting it for account of the old shareholder with loan for the repayment of his loan debt either directly to the bank in Switzerland or via the firm Sturzenegger & Cie., Basle."

And Mr. Schwartz then said: "And then the additional half page that is attached beyond is apparently a draft again dated April 17, 1940, captioned, 'Letter of the Bank to the Shareholders.'" And Mr. Schwartz read that in the following language:

"We refer to the oral discussions and confirm having granted you a credit in the amount of (blank) Swiss francs. Interest on the credit is to be paid with (blank) per cent per annum (pro anno), and three months' notice may be given

12254 by either party.

"As per instructions, we have remitted the credit amount for your account to the firm H. Sturzenegger & Cie., Basle.

"Yours truly."

Mr. Schwartz terminated the reading of the document and said: "Is that roughly a fair translation?"

Answer: "Yes, I should say so."

Question: "Now, I call your attention to the date of April 17, 1940 and to the fact that that date is later than the date of the exhibit that you have just looked at, have been looking at, Exhibit 25."

Mr. Sturzenegger said: "Yes. That was March."

Mr. Schwarts said: "The end of March. Now, this memorandum of April 17th, it purports to set out a very detailed method, does it not?"

And Mr. Sturzenegger nodded affirmatively. Where-

upon, Mr. Schwartz said: "Whereby the shareholders in these South American companies would receive loans?"

Answer: "Yes."

Question: "With your firm's involvement?"

Answer: "Looks like that."

Then come the two questions and answers which I read before and which I shall now repeat on [R. 7785].

Question: "Now, this is dated after the Exhibit 25. Does it help you to remember that the discussions as to loans or

12255 you giving backing through a Swiss bank or any money question involving the South American affair continued beyond the time that von Rospatt and the other gentleman called on you?"

Answer: "No, doesn't help me, Mr. Schwartz."

Question: "Does it help you to remember anything at all about the money aspect of the South American situation?"

Answer: "No. On reading this I am asking me whether really some transactions of this kind have been carried through through my firm. When you questioned me this morning I said to the best of my recollection I can not believe that something has been done. And that hasn't changed. Seems to be a suggestion, but I can not recollect that this transaction has been carried through."

Then to continue beyond where I began to frame my question before, Mr. Schwartz says: "Can you recollect that any part was carried through? After all, this talk of a bank in Switzerland granting a credit and then the shareholder uses this credit to repay his loan to I. G.——"

Answer: "No."

Question continuing: "—and then the bank that granted the credit is to remit that credit to the shareholder's favor in your bank, and then your bank has in advance declared its willingness toward the other bank to leave an amount there, and Farben, in turn, will leave an amount with your

firm for repayment of the loan debt,—now you will agree that this is

12256 tremendously intricate, won't you?"

Mr. Sturzenegger says: "It's very intricate. Very complicated."

Then, after some additional colloquy or questions and answers, the question comes: "And it doesn't help you to remember anything at all in connection with the money part of the South American transaction?"

Answer: "No, it doesn't help me, Mr. Schwartz."

By Mr. Wilson:

Q. Mr. Sturzenegger, my question is are you now prepared to state from information which you received when you returned to Switzerland whether some transactions of the kind referred to in this series of questions and in the quotation had been carried through by your firm? A. I can state now that no transaction of the kind referred to has been carried through by my firm.

Mr. Schwartz: How about discussions as to the plans for carrying them through?

By Mr. Wilson:

Q. Mr. Schwartz suggests the inquiry as to whether discussions were had looking to plans to carry it through or in relation to plans to carry it through. A. Whether discussions took place?

Q. With von Rospatt or any other German. A. I cannot recollect that.

12257 Q. You do know they were not carried through, sir? A. That I am certain.

Mr. Schwartz: May I, Mr. Wilson?

Mr. Wilson: Yes.

Mr. Schwartz: Do you know whether anything occurred that made it unnecessary for them to be carried through?

The Witness: No.

MR. SCHWARTZ: Or impossible that they be carried through?

THE WITNESS: No, do not know that.

MR. SCHWARTZ: Did the failure of Mr. Auer to secure certain applications from South American individuals make it unnecessary that it be carried through?

THE WITNESS: No, do not remember what was the reason. We didn't do it.

MR. WILSON: I am now going to inquire about a question on [R. 7791], but I shall begin reading on [R. 7789].

Question by Mr. Schwartz: "Can't remember any detail about a transaction or a scheme whereby all these steps would be done?"

MR. SCHWARTZ: What steps? The same thing we have been talking about?

MR. WILSON: I think it will develop in the next question or two as I remember it.

Question continued: "An outside bank would grant a

12258 credit? Can you remember anything about that part of a loan?"

Answer: "No."

Question: "A bank other than your own granting a loan?"

Answer: "No, I can not remember."

Question: "Or with the proceeds of such a loan the loan from Farben to be repaid by the shareholder? Can't remember a thing about the part of it either?"

Answer: "No, I do not remember the shareholders neither, as I told you. May be that, as I stated before, we had transactions or transfers with South America just as a bank. That can be. But I do not remember such a setup anything like that."

Question: "I see. You don't remember anything in connection with the Auer transaction, about any part of that setup?"

Answer: "No."

Question: "I'd like to break it up into parts."

Answer: "No."

Question: "The outside bank granting the shareholder a loan?

Answer: "No."

Question: "You don't remember anything about that?"

Answer; "No."

Question: "Nor the shareholder using his proceeds of that loan to repay Farben?"

12259 Answer: "No."

Question: "Nor the shareholder instructing another bank than yours to remit the credit to that shareholder to his account at your bank?"

Answer: "No, I don't remember."

Question: "Nor your bank declaring its willingness to another bank to leave an amount at that other bank equal to those loans?"

Answer: "No, I remember nothing of this."

Question: "Nor Farben leaving an amount with your firm?"

Answer: "No. They had, of course, an account with us during this time, no doubt."

Question: "But you don't remember that any of those accounts were earmarked for any part of the South American transaction?"

Answer: "No, I don't remember."

Question: "You couldn't swear to any of this that you have just been talking about?"

Answer: "No. It's quite possible that there were orders, transfer of money, something like that. That I can not remember nor can I exclude it. But I can only say in reading this I do not remember such a construction being carried through."

By Mr. Wilson:

Q. Mr. Sturzenegger, are you now prepared to answer

12260 more definitely whether or not such a construction was carried through? A. Well, no construction involving my firm was carried through.

THE MASTER: Is there any peculiar meaning to "construction," or is it meant to indicate "transaction"?

MR. WILSON: Suppose I reframe it.

THE MASTER: All right.

BY MR. WILSON:

Q. Mr. Sturzenegger, do you understand by "construction" that we are referring to the transaction— A. Yes, the transaction.

Q. —which has been reread to you in my question? A. Yes. I mean I cannot, of course, make any statements whether other banks without my knowledge have had transactions as suggested in those memoranda, but I am certain now that we were not involved. My firm didn't carry through such transactions.

Q. Thank you.

MR. SCHWARTZ: Am I right, Mr. Wilson, this is the same thing you asked about a moment ago?

MR. WILSON: I think perhaps it is.

MR. SCHWARTZ: So I needn't ask about the discussions.

MR. WILSON: I believe it has to do with the same, but it was another point at which you pressed him about whether

12261 he could swear to it or not.

THE MASTER: I assume he would make the same answer that he doesn't remember any such discussions with a view to such a transaction?

THE WITNESS: Cannot remember it. I cannot exclude that there were discussions.

MR. WILSON: Now I want to come to a question and answer at the top of [R. 7798]. I will begin reading the question at the bottom of [R. 7797].

Question: "Then you notice that all six names under the

Chemicals agency in Mexico—it says 'presumably all loans.' That's Fischer, Moeller, Leser, Gonzales, Torres and Thurmann."

Answer: "Yes."

Question: "Ever make any loans to any of those people?"

Answer: "No, not to my recollection, Mr. Schwartz."

Question: "You couldn't swear to it?"

Answer: "Couldn't swear to it, no."

Question: "Couldn't swear to any of these things about these individuals?"

Answer: "No, but, as I do not remember anything, I feel pretty sure. But that's my recollection."

Question: "But you couldn't swear to it?"

Answer: "No."

Question: "Could you?"

12262 Answer: "No, I couldn't."

By Mr. Wilson:

Q. Now, can you swear to it at this time, Mr. Sturzenegger, as to whether or not you ever made any loans to any of the people whose names I mentioned?" A. Yes, I can. We never made loans to these people.

The Master: That is as a result of your investigation at your home office?

The Witness: That's correct. That is my information as I have checked it.

Mr. Wilson: Mr. Schwartz, that will conclude my inquiries into this line.

Mr. Schwartz: This Auer-South America line?

Mr. Wilson: Yes.

* * * *

12268 Redirect Examination

By Mr. Schwartz:

Q. Mr. Sturzenegger, you remember in the Auer matter that we showed you at least some letters which you said

were your letters to Farben enclosing an Auer letter. A. I think there was only one, if I am not mistaken.

Q. I see. I had forgotten how many. But I wanted to remind you that there was at least one as a preliminary to reminding you of something else. At [R. 7628-7630] we discussed the statement of the SCO that there were no files on Auer at your premises—or Sturzenegger's. A. Yes.

Q. And I think you couldn't explain why there were no files. You suggested they might have been lost. You didn't recall that it was your custom to place the Auer correspondence in your personal file. And you suggested or said that if there were any files the SCO would have seen them. A. Yes.

Q. That's roughly what you said. A. Yes, I remember.

12269 Q. Now, in this search you have caused to be made between the deposition in February 1949 and your cross by Mr. Wilson, have you learned anything of the existence of files in your premises on the letters that you passed between Auer and Farben? A. No. I only got confirmed what I told you—that there are no files and no correspondences. I asked again and asked the people, "Look if you can find something." And nothing was found.

Q. And you are clear they reported nothing could be found of the letters that you sent Farben enclosing a copy from Auer? A. Yes.

Q. Or of the copy that it appeared Mr. Auer sent for your files? You remember one of his letters to you said: "Dear Doctor, I enclose a copy for you and another" or "a copy to be passed on and one for you." A. I think it was not quite clear. It was just a communication. It was, if I'm not mistaken—the deposition was not entirely clear whether he had sent me two copies or only one copy or the original he had got from South America. Well, I'm not sure. I couldn't find——

Q. In any event, whatever it is he may have sent you

for your files, you didn't find in your files? A. No, didn't find that.

12270 Q. And the copy of the letter you send to Farben passing on his letter you didn't find in your files? A. No.

Q. Have you learned anything that would be an explanation of why they were not in the files? A. No. I mean it may be, but that's more guessing personally for me,—I mean you remember this evacuation period, and sometimes papers were moved to the mountains and back, and it's fairly possible that on such an occasion some letters may have been lost. But it's a conclusion I draw because there are——

Q. The things you passed for Auer were passed in 1941 or 1942, were they not? A. No, I think 1940.

Q. 1940? A. 1940 or 1941.

Q. Now, you moved to Lucerne, that possible evacuation premises, in 1939, did you not? A. That's correct. But not all was evacuated. There was always at later moments some transports to the evacuation stop, and when we needed matters we got them back. And so——

Q. What was it? Did you have a fire there or a train wreck? A. Pardon me?

Q. Did you have a fire there or a train wreck that
12271 makes you think you lost papers when you moved them to Lucerne? A. No, but I mean that was, of course—caused some difficulty in the whole organization. Many men of the staff too were in the military service, so I mean it's possible that not everything could be handled as carefully as before. Well, that's—I cannot make a statement that it happened on such an occasion. It's more drawing a conclusion, because I couldn't find any documents.

Q. I see. Now, will you turn to [R. 7754]. Just scan the pages between there and [R. 7757], about three pages. A. Do you want me to read these few pages?

Q. Just scan them so that you will have a recollection of what you said roughly.

(The witness examined the portion of the transcript referred to.)

A. Yes, I have seen it.

Q. You notice there we were discussing your thought. You said you didn't recollect it but you concluded that you may have suggested that the trustee, Mr. Auer, would need financial backing since he couldn't be asked to run a personal risk, and if the question arose as to whether a trustee would act for Farben for this South American business you would probably have made such a suggestion.

Now, in your search of your files, have you found any

12272 documents or any further information as to the discussions you had with Farben on the occasion of suggesting Auer? A. No, and I think—I feel pretty sure that there was no occasion for me to make a memorandum or so. I don't think that something has been put on paper.

Q. I see. You think when Mr. von Rospatt came and asked that you be a trustee, that Chemie be a trustee, and then you suggested Auer, that was all oral? A. Yes.

Q. You're pretty sure of that? A. I feel pretty sure. I cannot recollect having put anything on paper in this connection.

Q. Do you know whether Mr. Auer got financial backing from Farben for any obligation he had to undertake? A. No, do not know that.

Q. You don't know it? A. No.

Q. Do you know he didn't get financial backing? A. No, that neither. I mean we have seen I think—you showed it to me, Mr. Schwartz, from some other documents—that apparently Dr. Auer has got some payments for——

Q. That was compensation. A. Yes.

Q. I mean financial backing for any obligations he might have had to undertake. Do you know whether he got it

12273 or whether he didn't get it? A. Cannot make a statement about it. I do not know.

Q. Do you know if the affair he handled re South America for Farben came out so he didn't need any financial backing? A. Don't know.

Q. Don't know? A. Don't know.

Q. Nor do you know, I suppose, that the things he did required him to undertake some financial obligations but he still didn't get any backing? A. I do not know, but again drawing a conclusion—and I think I told you before—I mean if something like that would have come up he probably would have contacted me. And I cannot remember such an occasion. But I'm not sure about it. May be.

Q. I see.

MR. SCHWARTZ: May I have permission, your Honor, to give to the reporter for noting here the numbers of the exhibits which contain what we thought were letters that Mr. Sturzenegger wrote to Farben, received from Auer, for convenience of reference in connection with our discussion of a moment ago?

MR. WILSON: They're not documents that have heretofore been shown the witness?

12274 MR. SCHWARTZ: Oh, yes, and greatly discussed. I just wanted to collect them and give it to the reporter at this point—the numbers of the documents referred to.

THE MASTER: I should think it would be useful.

MR. WILSON: I have no objection.

MR. SCHWARTZ: I ask the reporter to note the following numbers at this place:

20-16048 was, I think, recognized as a copy of a letter from Mr. Auer to Dr. Sturzenegger.

19-16158 was, I think, identified by Mr. Sturzenegger as a photostat of a letter from him to Dr. von Rospatt which enclosed a copy of a communication received by Mr. Sturzenegger from his friend in Zurich.

Exhibit 289-23555 was identified as signed by Mr. Gierlichs, and it is a memo Mr. Gierlichs wrote to Dr. von Rospatt enclosing, it is said therein, a letter of Dr. Sturze-

negger to Dr. von Rospatt which was turned over to the undersigned, meaning Gierlichs, for delivery to von Rospatt. And it is further said therein that with this Sturzenegger is transmitting a report on South America which had reached him through the usual channels.

I should like to note too that Exhibit 20, unsigned though apparently an original copy, has the sticker on it "Einlage 233," which Mr. Sturzenegger identified as in use in his firm. And it is pretty clearly one of two copies of

12275 a letter Mr. Auer sent to Mr. Sturzenegger. And in it, the person sending it, whose signature does not appear, says that he is "sending you"—Dr. Sturzenegger—"two copies to enable you to forward one."

Lastly, I find that Exhibit 19—we marked the photostat of that but we in fact have or now have the original, so I would like to mark that as well Exhibit 19-16158.

(The document above referred to was marked for identification as Defendants' Exhibit 19-16158—Supplemental.)

BY MR. SCHWARTZ:

Q. Mr. Sturzenegger, before we pass this, I would like you to look at the photostat of 19 which you looked at some time ago and now the original that has now been marked. That is no doubt your letter— A. Yes.

Q. —and the original of the sticker which you earlier identified in the photostat? A. Yes.

MR. SCHWARTZ: All right, Mr. Wilson. Sorry to hold you up.

MR. WILSON: Just three documents there, Mr. Schwartz? Is that all?

MR. SCHWARTZ: That's right.

MR. WILSON: Mr. Schwartz, for my own convenience, I want

12276 to ask you whether the three documents which you have just identified again by number are the only

three documents relating to the Auer-South American transaction.

MR. SCHWARTZ: No, Mr. Wilson, they are the three which I am pretty sure are the physical correspondence which went through Mr. Sturzenegger to Germany or relating to such physical correspondence, but the documents relating to Auer we believe are Exhibits 19-27 as well as 289.

MR. WILSON: 19 through 27?

MR. SCHWARTZ: Right. Both ends inclusive.

Off the record.

(Discussion off the record.)

MR. SCHWARTZ: Throughout Exhibits 19-27 there are references to other correspondence which was passed through Dr. Auer and Dr. Sturzenegger. For instance, in Exhibit 21, whose base number I don't have at the moment, there is a mention of another letter from Dr. Auer that went through Mr. Sturzenegger to Germany.

MR. WILSON: May I say——

MR. SCHWARTZ: Of course, I was making this point in connection with Mr. Sturzenegger's inability to find in his files any copies of these letters.

MR. WILSON: Mr. Schwartz, the three documents which you previously referred to are all dated in June of 1941?

MR. SCHWARTZ: That's right.

12277 MR. WILSON: Just to crystallize the thought from my point of view for the benefit of the Master and the rest of us, are any of your exhibits in the Auer-South American matter dated after Pearl Harbor?

MR. SCHWARTZ: I couldn't be sure of that at the moment. Just a second please.

Yes, Exhibit 22 is dated January 12, 1942.

MR. WILSON: Is that a Farben memo?

MR. SCHWARTZ: That is an Overhoff memo which states in part it's about discussions in Switzerland on January 5 to 9, 1942, and it says in part "on the advice of Dr. Sturzenegger the notary used in Basle was Dr. Tobias Christ."

And that's the one I think to which you referred the other day and in which it is also said, "We have asked Dr. Sturzenegger to promise him"—meaning Auer—"a yearly salary of between 1,500 and 2,000 Swiss francs."

MR. WILSON: But you have no correspondence from Dr. Sturzenegger after Pearl Harbor?

MR. SCHWARTZ: No correspondence from Dr. Sturzenegger after Pearl Harbor. I think I'm right there.

MR. WILSON: Does that conclude your presentation?

MR. SCHWARTZ: Yes.

That's all I have on the Auer matter.

CROSS EXAMINATION (Resumed)

BY MR. WILSON:

12278 Q. Mr. Sturzenegger, we will turn to the subject of the Norsk Staal shares. You recall, do you not, the certain quantity of Norsk Staal shares that Mr. Schwartz discussed with you on your direct questioning? A. Yes, certainly.

Q. And I think that quantity from time to time was described in Farben receipts. A. Yes.

Q. Safekeeping receipts. A. I mean safekeeping receipts. They were apparently and had a long time been deposited with I. G. Farben for our account as banker.

Q. Now, in connection with your return home in the recess, did you secure additional information to clarify some of the points that Mr. Schwartz raised? A. Yes, I did.

Q. Let me see if I can start in this manner: Did this quantity of shares ever belong to Greutert and Company? A. Not to my information.

THE MASTER: Which quantity?

THE WITNESS. May be—I'm not certain about it now—in the very early phase, but I don't think so.

MR. WILSON: Your Honor, when I said this quantity, I was referring back to the quantity shown in the safekeep-

ing receipts of Farben, which quantity slipped my memory at the
12279 moment.

THE WITNESS: I believe 600 shares or, expressed in Norwegian kroner, 72,000, if I'm not mistaken.

MR. SCHWARTZ: After their capital reduction?

THE WITNESS: After the capital reduction, yes. I mean the final phase during the last years which was discussed.

MR. WILSON: I should have that at my fingertips but I don't.

MR. SCHWARTZ: 901 shares, wasn't it?

THE WITNESS: Yes, may be, but 72,000 kroner I think.

BY MR. WILSON:

Q. I pick up at random, Mr. Sturzenegger, the Government's exhibit whose base number is 12300. I regret that my copy doesn't mark the prefix. This seems to be a reference as of December 31, 1939 to these shares. The quantity as shown is 901 shares at kroner 80 nominal. A. Yes.

MR. SCHWARTZ: That's Exhibit 165 I think, Mr. Wilson.

MR. WILSON: Thank you, Mr. Schwartz.

THE WITNESS: 1940. Yes.

BY MR. WILSON:

Q. You get the 72,080 by multiplying 80 by 901? A. Yes, that's right.

Q. Now, I only had one ear listening to you while I was searching for that document, Mr. Sturzenegger. The
12280 question which I asked you and which you did respond to but I didn't get the full response to myself was whether Greutert or Sturzenegger were ever the owners of those shares. A. I. G. Chemie. I was not, during the deposition questioning, quite certain. I thought the Grutchemie Consortium. Now I am informed after searching the matter that Greutert held it for I. G. Chemie.

Q. I see. Now, do you have a recollection as to the ap-

proximate time of acquisition of those shares by Chemie? A. It goes far back.

Q. And did there come a time when there was a break in the Chemie ownership for some period? A. Yes.

Q. Approximately when was the break? A. In 1943. Beginning of 1943.

Q. And who acquired the shares from Chemie at that time? A. They were first acquired, as I am now informed, by Mithras, this little company close to Greutert-Sturzenegger. Then they were there only for a very short period, a transition period. Then they went to my firm, which sold the shares in question in combination with setoff transaction I believe in June 1943 to I. G. Farben.

Q. All right. Now, would you say that the transaction from Chemie to Mithras and from Mithras to Sturzenegger and

12281 Company was all involved in a short period of time in the year 1943? A. Yes, in the early part of 1943.

MR. SCHWARTZ: How short, Mr. Wilson?

BY MR. WILSON:

Q. Do you remember how early in 1943 this transaction began? A. I'm not absolutely sure. I mean my recollection is now that they were only some weeks or a month or two in Mithras.

Q. In any event, it would be a maximum of six months? A. For the whole.

Q. For the whole? A. Yes.

Q. All right.

MR. SCHWARTZ: How short was it? Unless you don't want to. It's all right.

MR. WILSON: He fixed the time. Let me see if I can clear it up a little more.

BY MR. WILSON:

Q. You fixed the time of the sale to Farben in June of 1943? A. Yes. That's how I recollect it.

Q. And is it your recollection that the Mithras acquisition was close to the first of the year?

12282 A. Close to the first of the year.

Q. 1943? A. Yes.

Q. And have you a recollection as to how long Mithras held it? I mean a matter of several months or something like that? A. No, only several weeks to my recollection about it.

Q. All right. So that again I say that not as much as six months elapsed for the whole transaction? A. No. That's correct.

Q. Now, you spoke about a setoff transaction. A. Yes.

Q. With Farben, involving these shares? A. Yes.

Q. Do you recall whether any other items were involved in such a transaction? A. Yes, they were. You remember when I was questioned by Mr. Schwartz I had in mind vaguely a compensation transaction but was unable to come to the details, and, therefore, I inquired after that, and now I can give the full information.

Q. Do you denominate the transaction which you are about to describe as a "compensation transaction"? A. Yes, I do.

Q. All right. Now, give us your best recollection of

12283 those details. A. I. G. Farben took in this transaction over, besides these Norsk Staal shares, some claims we had toward German clients, small claims.

Q. You used the word "toward." You mean "against" Germans? A. Yes, against. And amongst those, if I recollect them, was a part of a claim against Frank Fahle.

Q. I wonder if I might interrupt you before you try to give more details? Can you state approximately how many Swiss francs or how many Reichsmarks were involved in this compensation? A. Yes. I mean the Norsk Staal parcel, together with these claims I refer to, makes

a total of about 155,000 or 160,000 francs. And then, in addition, we paid a cash amount of 113,000 I believe, if I am not mistaken. I recollect clearly the total amount which then, including this cash amount, comes to 368,000 francs—I mean 268,000 francs. Excuse me. And that was the amount that was reckoned out for this compensation business, because we—the firm Greutert/Sturzenegger—had, as you know, pension obligations from very old contracts towards the Metallgesellschaft A. G.

Q. That's your liability? A. That's our liability. And that was just the sense, the meaning, of this setoff transaction. We got rid of a

12284 corresponding amount of our pension liability towards Metallgesellschaft, namely, in the amount of 268,000 francs, by transferring to I. G. Farben, which then arranged the matter with Metallgesellschaft, by transferring, as I told you, to I. G. Farben, this Norsk Staal parcel plus the different smaller claims I began to enumerate.

Q. You were mentioning Frank Fahle. A. Yes.

Q. And you said "part of a claim." A. Yes.

Q. Did you— A. It's not the whole. It's about an amount of 30,000 francs that was involved. Total claim was a little bit higher. And it was further a claim against Weber-Andreae. I think it was also part of it; if I'm not mistaken, 40,000 francs. Then there was another client, a Mr. Moss von Seiler. That was a smaller amount I think than was the total claim. And a very small amount, if I am not mistaken, a Mrs. Elise Scherer in Munich. I think that's all.

Q. Do you remember how you acquired the von Seiler claim? A. Yes. This claim originated from a transfer from Bornhauser and Company, Zurich, the bank in liquidation we have already mentioned during another deposition.

Q. You acquired some of the assets of Bornhauser?

12285 A. Yes, some of the assets. Some of the claims. One was, for instance, this Seebohm claim.

MR. SCHWARTZ: Hermann Seebohm?

THE WITNESS: Yes.

BY MR. WILSON:

Q. Do you remember Mrs. Scherer? Was she an original client of yours or was she an acquisition by assignment? A. She was, if I am not very much mistaken, an original client.

Q. She was a German? A. I believe so. That was only a few thousand francs—three or four thousand francs.

Q. Had these claims lain far back, or were they recent loans? Do you remember? A. They were, with the exception of this Moss von Seiler claim which, as I told you, was acquired on the occasion of when this Zurich private bank was wound up I think in 1938 or 1939, the others lay farther back. They go farther back. They are older. Old claims.

Q. And to ask you the question specifically, they were not wartime loans? A. Oh, no.

Q. Would you say with fair assurance that the Frank, Fable debt and the Weber-Andreae debt and the debt of Mrs. Scherer all antedated, let's say, first, Pearl Harbor?

12286 A. Oh, yes, of course.

Q. Did they antedate the breakout of war in Europe? A. Yes, no doubt.

Q. Do you remember the valuation approximately that you put on the Norsk Staal? A. Yes, about par. About 70,000 francs.

Q. Now, it's your recollection, is it, that those five items added up to around 155,000 Swiss francs? A. That's it. And then we had to pay the balance because our liabilities against the Metallgesellschaft for these pension obligations were computed to the amount of 268,000 francs. So, in order to get rid of this liability, we had, of course, to

fill in the gap. Means the cash amount of the balance. And that's about 113,000. So we come to the total amount involved in this transaction I tried to describe of Swiss francs 268,000.

Q. These pension claims that you refer to of Metallgesellschaft, were they claims against your firm or against Chemie? A. No, they had nothing to do with Chemie. They were old claims against the predecessor of my firm, Ed. Greufert and Company.

Q. Had the pension plan, if I may call it that, been established during the days when Metallgesellschaft had an active interest in the firm?

12287 A. That's correct.

Q. Did this transaction liquidate, if you recall, all the liability of your firm to Metallgesellchaft— A. No.

Q. Wait a minute—on account of the pension claims? A. No, sir. It was a partial liquidation, and we were very glad to arrange the matter this way because we, in the way I described you, of course didn't make any profit, but we avoided possible losses.

Q. In arranging for this compensation and in executing it, Mr. Sturzenegger, was there contact by you or your firm with Metallgesellschaft? A. Yes, sir.

Q. Was there also contact by you or your firm with Farben? A. Yes, sir.

Q. Do you remember the officials, let's say, of Metallgesellschaft with whom you dealt? A. I believe it was Traudes, after I have gone through the matter now again.

Q. Maybe his Honor has forgotten who Traudes was in Metallgesellschaft. A. Traudes is one of the leading men of the Metallgesellschaft.

Q. Is he a lawyer—

12288 A. Member of the Board. Originally a lawyer. He became then a manager and ultimately a member of the board of the Metallgesellschaft. I made his acquaintance when I was at the Metallgesellschaft in early 1931.

Q. And do you remember with whom you dealt in respect of Farben about this matter? A. There I'm not so sure. I believe with Rong.

Q. Rong? A. Yes.

Q. Now, I think from your previous questions your answer to this question is obvious, but I will ask it nevertheless. Did you go to Germany to deal in this matter? A. No. I have never been during the war in Germany.

Q. Yes, I remembered that answer. That is the reason I thought the question was superfluous, but I asked it at this point anyway.

Do you recall whether these gentlemen came to Basle? A. Well, I cannot remember the occasion. I think—I mean I have seen the correspondence and have checked. No gentleman is named. Reference is made to a former discussion. And I think it's probable that it was discussed with Rong. I remember that Rong was during the war a few times in Basle, and I think that was one occasion.

Q. Now, let me ask you again about this additional cash sum which you had to pay of 113,000 Swiss francs. Do

12289 you remember whether that was paid to Metallgesellschaft directly or to Farben? A. I believe it was paid to Farben.

Q. And— A. For account of Metallgesellschaft, of course.

Q. And in other instances I recall that when you were working out a liquidation of an indebtedness you made an additional loan. I want to ask you whether this 113,000 is in any way capable of the construction that it was a loan to Farben? A. No, it was not a loan at all. It was an amount we paid to get rid partially of an indebtedness against Metallgesellschaft, and it was only technically included in this setoff business, and the whole transaction I may add was covered by a permission we got from the Swiss Compensation Office.

Q. And your understanding was, was it, Mr. Sturzeneg-

ger, that the entire aggregate of some 268,000 Swiss francs was going to Metallgesellschaft in partial liquidation of your firm's pension liability?

MR. SCHWARTZ: Objection. Leading.

THE MASTER: Well, he's summing up what's already been said, it seems to me.

I think he can answer it just on that ground.

THE WITNESS: It has to go. We were indebted towards

12290 Metallgesellschaft. We made technically this compensation business with I. G. Farben. I always understood, and if's even reflected in the correspondence, that I. G. Farben had to pay it over to Metallgesellschaft, and Metallgesellschaft had to declare to us that we were from now on free from this part of our pension liability.

THE MASTER: Where were these pensioners? If you know?

THE WITNESS: Yes. One was Euler. That was the biggest by far.

THE MASTER: He was in Germany?

THE WITNESS: He was in Germany to my knowledge.

THE MASTER: And the others?

THE WITNESS: I think Traudes was himself included for a small amount if I'm not very much mistaken. Others—I believe to recollect the name of Mr. or Mrs. Oehmiken.

THE MASTER: How do you spell that?

THE WITNESS: O-e-h-m-i-k-e-n. Maybe not "k." Maybe "ch." And, well, there were about four or five items together, but by far the greatest item concerned Euler.

BY MR. WILSON:

Q. Mr. Sturzenegger, my recollection is that in the course of your being questioned on the subject of Norsk Staal you ventured the thought that these shares might sometime have been in the Grutchemie Consortium. A. Yes.

12291 Q. Were they, sir? A. No. I mean I had the vague recollection, I remember, that they were probably not held for the own account of Greutert. I thought of Grutchemie. Now, it was not in fact Grutchemie Consortium but I. G. Chemie. I didn't recollect that when I was first questioned.

Q. How were these acquisitions handled on the part of Mithras and on the part of your firm? That is to say, were there formal debits and credits? A. Oh, yes.

Q. In the books of the respective companies? A. Oh, yes. They went through the books.

Q. Do you remember the values? A. I'm not sure. May be that some interim margin was left with the Mithras. That's my recollection.

Q. What would you say, Mr. Sturzenegger, as to whether the valuation that your firm put on these shares in the compensation transaction was higher or lower or approximately the same as the amount for which you—the amount which you paid for these shares. A. I cannot recollect what was paid originally.

Q. No, I don't mean originally. I mean when your firm acquired them from Mithras. A. I believe there was no difference, but I think that Mithras acquired them a little bit cheaper from I. G. Chemie.

12292 Q. I see.

MR. WILSON: Mr. Schwartz, I think that's all I can think up on Norsk Hydro. Would you like to question now, or would you like to pass?

MR. SCHWARTZ: Now, please, if I may.

MR. WILSON: All right.

REDIRECT EXAMINATION (Resumed)

BY MR. SCHWARTZ:

Q. These details that you have now given in response to Mr. Wilson's questions, Mr. Sturzenegger, you learned these since the direct examination a month or so ago? A.

That's correct. I mean I learned them in the meantime while I was in Basle. It struck me that I couldn't recollect, wasn't able then to give clear statements when you questioned me. Therefore, I had occasion to go into the matter.

Q. Did you go into the matter yourself or did you ask someone to do it? A. Both. I asked the gentlemen, "Let me see some correspondence."

Q. Did you go into it with Chemie's people and Chemie's files and your people and your files, or just your own? A. Only my firm's files.

Q. Did you know there was nothing with Chemie's people

12293 or in Chemie's files, or did you just not go into it?

A. No, it was easy to trace it as soon as I detected that they were held for I. G. Chemie and had been held by my firm. Then I followed the way these shares took through Mithras and then the transactions, how they were wound up. And that was confirmed, I think, by Chemie people, that they were in the portfolio before.

Q. But you didn't go into the Chemie files? A. No.

Q. So you couldn't—or perhaps you did nevertheless—did you find out anything of the origins of this purchase by Chemie in the early days? A. No.

Q. Why Chemie bought it? A. No.

Q. Whether there was any guarantee by Farben in connection with the purchase? A. I never heard of a guarantee. I have never seen such a guarantee.

Q. But you haven't looked in the Chemie files? A. No.

Q. Did you find anything of the details of why anybody was willing to pay par for these Norsk Staal shares in 1943? A. No, didn't find out.

Q. Or whether payment at par or purchase at par was

12294 pursuant to any guarantees that dated back further? A. No, I don't think so.

Q. The sale from Chemie to Mithras, you said, was a little lower than par? A. Yes.

Q. Was it known at that time that they would be sold onwards to a German for par? A. That I'm not certain about it. I mean the discussions about this setoff business I think had already begun, when it was relatively complicated, concerned these different claims, liabilities against Metallgesellschaft. I think so.

Q. You think the steps from Chemie to Mithras to Greutert ran over six months? Or was it a much shorter period? A. No, it was a short period.

Q. A shorter period than six months? A. Altogether I think it was shorter, because, if I am not very much mistaken, they were sold to I. G. Farben during June and were taken over from I. G. Chemie early in 1943.

Q. But in the same month? Would you say the three steps-Chemie to Mithras to Greutert or Farben or the German was all in one week? A. No, no.

Q. In one month or in three months or six months? A. The whole thing nearly six months.

Q. All right.

12295 A. Maybe five. But in Mithras they were only a relatively shorter period.

Q. Who is it owned Mithras at that time? You may have told us but tell us again who were the major stockholders. A. Yes, that I have checked too. Mithras at that time had a capital of 400 shares of nominal value of 500 francs each share, which makes a total of 200,000 Swiss francs. And out of this 400 shares, 200, I believe, and 75 were owned by my firm. And the balance by Perpetua.

Q. I see. So you haven't found out—changing the subject for a moment—you haven't found out anything as to the whole period of time during which Chemie held these shares? A. No.

Q. You have further details only on this from 1943? A. It's apparent that we as banker all the time held them

for I. G. Chemie, the shares being deposited, on the other hand, for account of Greutert with I. G. Farben.

Q. Have you learned anything in your studies in Switzerland of what Norsk Staal was? A. No.

THE MASTER: Do you know what the company was and what it was engaged in?

THE WITNESS: Well, as we have made out during a previous deposition day, it's a Norwegian company, apparently involved

12296 in matters of metal and having to do with special proceedings, or something like that.

BY MR. SCHWARTZ:

Q. That's what the Krupp files or the Stahlwerk files say. A. Yes.

Q. But have you learned that's right? A. No idea.

Q. Have you learned what Norsk Staal did? A. No.

Q. Have you learned if it ever existed in 1943? That it was or was not in liquidation at the time this block of stock was sold? A. No idea.

Q. You haven't learned anything of what its function was, how long it lasted, what it did, what it was doing during the war? A. No.

Q. Who were other stockholders in it? A. No. I mean the only thing is we were very much interested just to get rid of the shares, and, of course, at the best possible price. It seems that in the way that it could be included in this transaction a solution could be gained which met our wishes.

Q. Have you learned whether they had been offered to

12297 anybody else between the beginning of the war and 1943? Had these 72,000 nominal value Norsk Staal shares been offered to anybody else? A. Not to my knowledge.

Q. Have you learned whether Chemie had tried to find

a market for them anywhere else? A. I do not know of such a thing.

Q. Have you learned of it? A. No.

Q. From what you learned on the last trip do you know whether there was a market for these shares between the outbreak of war and 1943? A. Probably not. At least not in Switzerland. I mean it was——

Q. Anywhere at all that you could get money for them? A. I do not know whether it would have been possible in Norway, but then we would have got probably blocked kroners.

Q. You don't know but you think— A. Don't know.

Q. —Norway would not have been a good market? A. Even if we had got there a fair price, it still would have resulted for us in blocked kroners, which were depreciated, whereas in this transaction we could more or less get the full value.

12298 Q. Did your searches disclose anything as to whether there was any bargaining on the valuation to be placed on these Norsk Staal shares in this setoff? A. That I do not remember.

Q. How you computed the price? And with whom? A. I think it's just correspondence about the par value price.

Q. Well, did you bargain about this price on this item with Traudes or with Rong or both? A. I think with Rong. I cannot recollect the details but I think it's highly probable.

Q. Did you say they ought to be par and he said less? A. I think so.

Q. Or did you say they ought to be par plus interest and he said they ought only to be par? A. No, it was not to my recollection—it was never the question of interest. But we naturally tried to get the best possible price.

Q. Well, was this sale—it was a kind of sale even though it was a setoff? You sold them as the equivalent of— A. Included in this transaction I described.

Q. Were there any bargainings like you had on the

sale of the Winnica block to Farben? Did you compute what all your original investment was? A. Not that I remember, no.

12299 Q. You couldn't remember? You couldn't find anything on that? A. No, couldn't find it.

Q. I see. Can you tell me what Farben had to do with this thing? A. Well, have we not found out from your documents that Krupp and Farben——

Q. Krupp and Vereinigte Stahlwerke—but what did Farben have to do with this setoff transaction? A. Well, I should say perhaps the following: Weber-Andreae was a man connected—one of the managers I think of I. G. Farben. Fahle too was a manager of I. G. Farben. And these two items were the biggest client items included in this transaction. I mean maybe that more these persons personally had an interest too to get rid of their indebtedness in such a way.

Q. Well, Farben was not engaged in helping out its managers on the personal basis, was it? A. No, but I mean——

Q. What was Farben's business here? What were they getting? What were they doing? A. They were getting these Norsk Staal shares. Then—but that is a speculation. It was not up to us to think it over how Farben came to this conclusion to carry through the counter transaction. But they might have had an interest to

12300 help their two gentlemen I mentioned to get rid of their indebtedness towards a foreign country. Well, that's speculation.

Q. Had they guaranteed those debts to you? A. No.

Q. Those debts were owed to you in Swiss francs? A. I'm not sure whether—Yes. Both.

Q. And, of course, Farben couldn't have—the debtors, Frank Fahle and Weber-Andreae, couldn't have paid you without using foreign exchange? A. Certainly.

Q. For which they would have had to have a permit from the German Government? A. Yes.

Q. And Farben, of course, could hardly have used foreign exchange to pay off its managers' debts? A. No.

Q. It isn't likely the German Government would give permits just for that? A. No. But, so, no foreign exchange was needed for this transaction. On the other hand, we were indebted against Metallgesellschaft in Swiss francs.

Q. Well, turning back to what Farben was getting out of this, you said they had the satisfaction of helping their managers. They had the satisfaction of getting this block of

12301 Norsk Staal stock? A. Yes.

Q. What else were they doing in here?

Mr. Wilson: Now, I object to the question unless it's clear as to whether it calls for speculation or as to whether it calls for knowledge on Mr. Sturzenegger's part as to what Farben said they wanted it for or if he otherwise knew.

Mr. Schwartz: Well, let's say if he knew in any way at all.

By Mr. Schwartz:

Q. What was Farben getting out of this? A. I do not know. I mean the fact is that they were ready apparently to carry through the transaction on that basis, and whatever other elements they may have induced, that I do not know. I mean——

Q. Well, you know, for instance, they were getting 113,000 Swiss francs? A. Certainly. But, of course, not as a present.

Mr. Wilson: Nor as a loan?

The Witness: Nor as a loan.

Mr. Schwartz: I see.

The Master: Did the pensioners know that Farben would be substituted for Sturzenegger as the payer of the pension?

THE WITNESS: I don't think that it was so. I mean my conception is that I. G. Farben paid then the amount over to

12302 Metallgesellschaft, and Metallgesellschaft——

BY MR. SCHWARTZ:

Q. In what currency? A. Pardon me?

Q. In what currency? A. Well, that probably was in German currency. I mean in inner German indebtedness it was, of course, highly probably settled in German currency. That is, all these thoughts were not up to us as soon as it was clear that both companies agreed to a transaction on the discussed basis.

Q. But looking at it only from the point of view of the fresh money—not the fresh money—yes, well, fresh money, in the sense of the 113,000 francs—you paid off your pension obligations in Swiss francs, with these claims against Weber-Audreae and Frank Fahle and the Norsk Staal stock and 113,000 Swiss francs? A. Yes, it amounts to that.

Q. Right. The 113,000 Swiss francs went to the account of Farben with you? You kept it on deposit for Farben? A. No, no, that's not so.

Q. No? How, then? A. Well, on deposit—I have not checked that and I do not remember now how the account of I. G. Farben was, if they had at that time positive balance—I mean a balance in

12303 favor of I. G. Farben in Swiss francs. We normally would have debited them so the money was——

Q. Debited them? A. Yes, sure.

Q. This 113,000 you paid out? A. Yes. That's credited. That's all right.

Q. So you credited Farben for the 113,000? A. Yes, for that.

Q. Right. The pensioners then had no claim against you? A. No.

Q. Metallgesellschaft had no claim against you for those pensions, and the pensioners could go against Metallge-

sellschaft, of course, and they now had Reichsmarks? A. Well, how that was internally settled between the pensioners and Metallgesellschaft——

Q. You don't know? A. —I don't know. I think so.

Q. All right. But what you do know is that when the transaction was over Farben had Norsk Staal, Farben had the claims against Frank Fahle and Weber-Andreae? A. Yes.

Q. The others were no more than 10,000 or 15,000 francs all told. A. Yes.

12304 Q. And Farben had 113,000 Swiss francs on deposit with you? A. Yes.

Q. Now, all this was with the consent of Metallgesellschaft? A. Yes.

Q. Whose idea was this? A. Well, I think that it was an idea that I should say was I think in my mind.

Q. It was your idea? A. Yes.

Q. That this three-way switch would be done? A. Yes, because we were indebted towards the Metallgesellschaft. On the other hand, we had—my firm had these claims against people in Germany which, of course, under the circumstances and with respect to the German foreign currency restrictions were in some way blocked, endangered.

Q. What was endangered? A. Well, endangered, blocked. Means they were not—had not their full value as if there were no German foreign currency restrictions.

Q. What didn't have its full value? A. The claims we had against Weber-Andreae and Frank Fahle.

Q. Yes. Right. Go on.

12305 A. And so we had, of course, an interest. I thought before now my firm pays over to Metallgesellschaft this liability originating from old pension contracts, well, is there not a way possible whereby we could at least partly make a setoff?

And so it was done.

Q. Well, it was your idea to bring Farben in and make this a three-way setoff? A. Pardon me?

Q. You say you owed Metallgesellschaft money? A. Yes.

Q. You had some bad or not very good claims against Frank Fahle and Weber-Andreae? A. Yes.

Q. And some Norsk Staal stock? A. Yes.

Q. We can be frank about the Norsk Staal stock. It wasn't worth much? You couldn't sell it for francs? A. Was not very much.

Q. So you had some pretty useless things. But you had a very strong obligation to Metallgesellschaft in Swiss francs? A. Yes.

Q. So it was your idea for this three-cornered switch—

A. Yes.

12306 Q. —and to give the weak assets to Farben and some more cash to satisfy— A. Yes, because in the hands of I. G. Farben—I mean in the hands of any German firms these assets were no longer weak, because as clients Andreae and Fahle were good enough. They were only not very good in a foreign country.

Q. I suppose Metallgesellschaft was rather reluctant to have this three-way switch, wasn't it? A. No. It was all arranged and discussed very amicably.

Q. It was your idea. Whom did you mention it to first? A. Pardon me?

Q. Whom did you mention it to first? A. To whom I mentioned first?

Q. Yes. Metallgesellschaft or Farben? A. I believe Metallgesellschaft.

Q. What was the reaction you had from them? A. I do not remember all the details.

Q. Well, do you remember what their general reaction was? Did they like it? A. They had nothing in opposition, because they knew perfectly well if they got foreign curreney they couldn't keep it. They had to deliver it to the Reichsbank probably.

Cross-Examination (Resumed)

* * * * * * * * * * *

12339 By Mr. Wilson:

Q. A couple of loose ends at this point, Mr. Sturzenegger. Has Mithras been liquidated? A. Yes, it has.

Q. And in what year? A. During the war. I think in 1944 probably.

Q. And do you remember who the stockholders were at the time of liquidation? A. I think then my firm held the whole capital. On the other hand, the distribution I mentioned before doesn't

12340 make a great difference as to the final result, because Perpetua was 70 per cent, as you know, owned by my firm.

Q. I understand that. But I did want to make the contrast between the record ownership at an earlier date and at the time of liquidation. A. Yes.

Q. Now, you remember that there were some inquiries about the swap of Chemie half-paid shares for Visca shares at one time, and, on the other hand, a swap of Chemie half-paid shares for Industrie shares at another time. A. Yes.

Q. First let's clear up the slight confusion that existed about how the ratio ran. Was it ten to one in each case? A. Yes. It was ten I. G. Chemie half-paid shares for one of the other categories.

Q. All right. Now, did you ascertain on your recent trip to Switzerland what the quantities of these shares were that were so swapped? Now, let's take them up separately. Let's take up the Visca swap first. A. Yes.

Q. How many Visca shares were swapped for Chemie shares, about? A. About 2,600 and some-odd. But roughly 2,600.

Q. And under your ratio that meant 26,000 or so Chemie

12341 shares? A. I. G. Chemie half-paid shares.

Q. Now, in order to crystallize the arithmetic at

that point, do you remember how many Visca shares were outstanding at that time? Let me see if I can lead you a little to help your memory. A. I think there was 6,000 shares at 500 francs nominal, because the capital was already at that time 3,000,000 to my recollection.

Q. And your have that quantity in mind when you say that only 2614 of them were involved in the swap? A. Yes.

MR. SCHWARTZ: He said 2600.

THE WITNESS: 2600.

BY MR. WILSON:

Q. And whatever the difference was, whether it was 2600 or 2614 or 2640, Mr. Sturzenegger, did you find out whether cash was involved in connection with the rest of those shares? A. No. The rest didn't belong, hadn't belonged at that time, to the German shareholders. They had already before belonged to the Greutert firm.

THE MASTER: Can we have the date of that, Mr. Wilson?

BY MR. WILSON:

Q. Do you remember the date of that, Mr. Sturzenegger? What year?

12342 A. I think '31, if I'm not very much mistaken.

Q. Now, taking up the Industriebank swap, what year was involved in that? A. Same year.

Q. Same year? A. Yes, '31.

Q. And how many shares of—first, how many shares of Industriebank stock were outstanding at the time of the swap? A. I think it was already or shortly after—no, it was I think already in existence, the capital as it existed later, of 5,000,000 Swiss francs.

Q. That was how many shares? A. That would be 5,000, because would have a nominal value of 1,000 francs each share.

Q. And do you remember how many shares approximately were involved in the Chemie share/Industriebank share swap? A. Yes. Exchanged against I. G. Chemie

half-paid shares were, if I'm not mistaken, about 1780 or 1770, one or the other.

Q. And you reaffirm on the ratio that that meant 17,000 and some-odd Chemie shares? A. Yes, that's correct.

* * * * *

12368 Q. Now, taking up the interrogation of the 25th of April——

THE MASTER: Would you give me a page reference, Mr. Wilson?

MR. WILSON: Yes, sir. I first want to clarify Mr. Sturzenegger's testimony as to whether a man named Hermann Schreck, who had a Japan locale, was a customer of Sturze-

12369 negger during the war or afterwards. That is first, your Honor, on page [R. 11830]. Now, before this was concluded I think there really was a clarification. And as I go through the volume I will give you the page where I think there was definite testimony that Schreck was a customer. But in order to make the matter clear, since on page [R. 11830] I think it is left that he was not a customer to MR. Sturzenegger's recollection, I want to establish the fact about that.

BY MR. WILSON:

Q. What did you find about Hermann Schreck, Mr. Sturzenegger? A. I have checked that when I was now in Switzerland, and he was a customer.

Q. Now, in what respect was he a customer? A. Well, he had an account. We didn't give him loans, advances. And to my recollection he had no deposits—I mean securities or shares or so deposited. Had just an account.

MR. WILSON: Your Honor and Mr. Schwartz, I find my notes are complete. On [R. 11922] I think it might be said that Mr. Sturzenegger upon further questioning said there was such an account. But this I wanted to clear up.

By Mr. Wilson:

Q. He was a money depositor? Is that it? A. Yes.

12370 Q. He was not a borrower? A. No.

Q. Have you any idea of the turnover in the account or the extent of it? Was it a large account? A. Not very large. I do not know or remember the exact figures. Was not of importance.

Mr. Schwartz: What does Mr. Sturzenegger mean by "not very large"?

By Mr. Wilson:

Q. What do you say, Mr. Sturzenegger, about that? A. Well, I mean there were to my recollection no amounts going into several hundred thousand francs deposited by Schreck with us.

Q. You mean just a few hundred thousand? A. Yes. I cannot remember now the figures, the exact figures.

Q. You have checked this account recently? A. Well, I checked—I discussed it. I made sure that he was a client during the war and that, as I told you, he didn't get loans, didn't have securities deposited; that he had just money balances, but I cannot recollect now the amounts.

Q. Mr. Sturzenegger, what did you ascertain to be the extent of your clients in Japan during the war? A. The number, or what?

12371 Q. The number. A. I ascertained that we had the following clients during the war in Japan: The first, Ahrens and Company. Then Hermann Bosch. Then this already mentioned Mr. Schreck. Then Mr. Ruhl was a very small account.

Q. Yes. Well, we'll take up Ruhl separately. I think you have already testified regarding the Bosch account? A. Yes.

Q. And you have just testified about the Schreck account? A. Yes.

MR. SCHWARTZ: Was Mr. Stürzenegger finished in his four?

MR. WILSON: That's all.

THE WITNESS: Yes, to my recollection that's all.

BY MR. WILSON:

Q. In every instance were these simply depositing and withdrawal accounts? A. Yes. I mean as to Ahrens I refer—and to Bosch—to the previous statement that sometimes there were bank notes deposited during certain times.

Q. I understand that, but what I mean is any credits advanced? A. No.

Q. No loans made? A. No.

12372 Q. Just ordinary deposits and withdrawals? A. (The witness nodded affirmatively.)

Q. What did you find to be the status of the Ahrens account at the end of the war? A. If I'm not mistaken, about —they had a balance in their favor of about 54,000 Swiss francs.

MR. SCHWARTZ: What date is Mr. Sturzenegger thinking of?

THE WITNESS: I think end of '44 or beginning of '45.

BY MR. WILSON:

Q. Is that still a balance with you? A. Yes, to my recollection.

MR. SCHWARTZ: Is that one of the balance sheets that were in the books that we gave you?

MR. WILSON: I don't know.

MR. SCHWARTZ: Or was it carried beyond? You remember there were several balance sheets, statements, from the Sturzenegger firm.

MR. WILSON: I didn't check it in that connection. Mr. Sturzenegger may know.

THE WITNESS: No, I think this—you showed me, Mr.

Schwartz, or referred to a somewhat previous period than what I checked in Basle.

MR. SCHWARTZ: So this is further information than was in those books?

THE WITNESS: Yes.

12373 BY MR. WILSON:

Q. Did you find any account as having existed at any time with Schoeller-Bleckmann? A. No. There had been remittances but has been checked and they had no account.

Q. Remittances to and from or just to? A. I believe "to." I cannot exclude now there may have been "from" too.

12376 Q. Now, dividing Mr. Schwartz's last noise, I know that he is going to ask you and I might as well: Not limiting the customers to Japan but taking the Far East, now do you remember

12377 any other customers in the so-called Far East? A. In the Far East? I have checked. We had additional customers, a few, in Shanghai.

Q. I see. A. And there were customers—Deutsche Farben Handels A. G.—or however it is called—"vormals" Waibel. Something like that. And a further company; it was Deutsche Stickstoff Handels A. G. "vormals" Krauch, or similar. I mean the title is perhaps not quite exact but it's very near to that.

Q. Were you reciting other names? A. I think Balthaser was in the latter.

Q. Is that the extent of the list that you remember? A. Yes. And there were some others. One was—well, I do not remember the names—one had the name Laur I believe.

Q. Spell that. A. L-a-u-r. Another's name was Rommelfanger.

Q. Spell that. A. R-o-m-m-e-l-f-a-n-g-e-r. And about two others the names of which I do not recollect.

Q. Were these depositors? A. Yes, all of them.

Q. They were not borrowers? A. No, none of them.

* * *

12381 Q. Mr. Sturzenegger, I will give the page reference in a few moments as I pass through this transcript, but my recollection is that you testified and I think you particularly mentioned the Yokohama Specie Bank to the effect that your firm had accounts in Japan. A. I believed so.

Q. What did you find to be the fact? A. That's not correct. I have been mistaken. We had no account with them, and they had no account with us and with no Japanese bank whatsoever. I mean I mixed it up with remittances we received from Japan and where the name of this bank and other banks was named as the source of the remittance.

Q. I think on several occasions in the transcript of the 25th of April you drew on your recollection with respect to whether letters were passed by hand to Japan. A. That's correct.

Q. Have you made some inquiry about that? A. Yes.

Q. At your firm's offices? A. I asked my staff, my people, how the matter was handled, as I was, I recall, not clear in my recollection. And they assured me that that was never the case. And I have asked them several times: "Are you absolutely sure that nobody came and that they passed and that no letters for

12382 Ahrens were handed to somebody personally?" And they said they felt sure that it was not the case. And I personally told you already I cannot remember, but my memory was strained. I believed that once it may have happened or so. I couldn't make a definite statement. Now I think—I feel by this checking rather sure that it was not done.

Q. Now, there were letters which were sent in your care? A. Yes.

Q. And in which direction were those letters designed

to move and by that I mean from somewhere to Japan or from Japan to somewhere? A. No, they were designed to move to Japan from somewhere.

Q. And you know of none moving in the opposite direction? A. None. Well, to make that complete, Werder told me that he believed to remember that just a few letters, personal matters, may have been sent from Bosch to him which he opened and which concerned just a personal thing as "thanks for these gift parcels," or so. Nothing else.

Q. Addressed to someone else? A. Yes.

Q. Then he mailed it on from there? Is that what Werder did with it?

12383 A. He didn't remember, but it was just—he said it was just nothing.

Q. Now, with respect to the letters moving to Japan in your care, what information have you developed as to the addressee of those letters? A. They were addressed, as I have been informed, to Ahrens care of H. Sturzenegger and Company.

Q. And were those letters opened, to your knowledge? A. No, they were not opened.

Q. And do you personally know whether any of those letters were actually reforwarded? A. No.

Q. Now, your testimony at this moment is not that they were not reforwarded? A. No. I only cannot recall it. And, well, there are still a lot of letters unopened in my office which I didn't recollect when I was asked during the last deposition.

Q. How many letters are there in your office not forwarded? A. Between 50 and 60.

Q. And what is the period covered by the postmarks of those letters? A. They cover the whole period from November or December 1941 to I think 1945.

Q. And I assume, or am I right in assuming, that the

12384 writer's of the letters name is not disclosed on the envelope, or what is your recollection about that?

A. I believe so. I haven't seen the letters but I asked Werder to check it.

Q. What about the sources of those letters as far as places are concerned? What were you told about that? A. My information is that most came from Zurich and a smaller part from Stockholm.

Q. Do you have any other information at this time as to the identity of the writers of those letters? A. No. To the forwarding of letters I perhaps should add that we have been discussing these letters apparently coming in in 1939 from Schroeder, England. I think these were forwarded.

Q. And they were forwarded to Ahrens? A. Yes, I believe so.

Q. Mr. Schwartz asked you about the sending of duplicate copies or communications by you to the Far East. What did you find to be the practice of your firm with respect to that, Mr. Sturzenegger? A. The practice was that in a certain time duplicate letters were written and that these duplicates were then mailed by a later mail occasion. The meaning was that if one mail should be lost, then there should be a probability that the duplicate should arrive. And as I have been in-

12385 formed, original and duplicate were forwarded the same way.

MR. WILSON: Miss Schmitz, would you be kind enough to get me out of those so-called Japan folders the document upon which there is a postscript? The letter I want is the one where there is a pencil——

MR. SCHWARTZ: Do you know its number?

MR. WILSON: Three hundred and—it's a special notation, private account of Ruhl.

MR. SCHWARTZ: Number?

MR. WILSON: Try 382.

MR. SCHWARTZ: That's a good number.

(Mr. Schwartz handed the document to Mr. Wilson.)

By Mr. Wilson:

Q. Now, Mr. Sturzenegger, taking up the matter of a
n named Ruhl, did you find whether he had an account
h you? A. Yes, sir. I wasn't sure. I thought not,
remember, during the questioning, the deposition.
Q. Yes. A. But I have checked that and he had an ac-
nt. He was a client.
Q. The account was expressed in what medium of ex-
nge? A. In Swiss francs.
Q. And do you remember the aggregate of the turnover
in
86 that account? A. Yes. It amounts to about 3,000
francs during the whole war period.

The Master: How much?
The Witness: 3,000 francs. It's just nothing.

By Mr. Wilson:

Q. Do you have a recollection as to when that account
s opened approximately or the period of time it ex-
ed? A. Well, I'm not certain. '41 or '42 I believe.
Q. And do you still have a balance on hand? A. Yes,

Q. To his credit? A. Yes, sir.
Q. Do you remember what that balance is? A. I think
00 and some-odd Swiss francs.
Q. Now, did you ascertain whether a transaction was
empted with you which involved currency other than
iss francs? A. Yes. I tried to check that because I
s on various occasions questioned about that.
Q. And when did this transaction occur? A. This at-
mpt for a transaction occurred in August of 1943. Might
July. No, I think it was August of 1943.
Q. Approximately what was the amount of the transac-
tion and the medium of currency?
87 A. We—I mean my firm—were informed that
Laenderbank had at our disposal or credited us—

that I do not remember now exactly how it was—with the amount of Marks 10,200 and some-odd, for account I believe of Ruhl. And, well, you'll have to question me further.

Q. Now, were these blocked marks or free marks? A. Well, they were Far Eastern currency and probably they were those Japanmarks in which Mr. Schwartz was so interested. They couldn't be converted into free Swiss francs. They could be converted probably into yens in Berlin.

Q. What did you do with this credit that you were notified of by Laenderbank? A. We didn't know what to do and asked for instructions by cable and got instructions from Ruhl. We had no interest. We couldn't dispose of the thing. And then, according to the answer I think we got from Ruhl I believe the beginning of September, we retransferred the money by asking Laenderbank to retransfer it to the Far East. I think it was German Bank of East Asia. For Ruhl. And the whole transaction is not even reflected in our books. I mean it hasn't been credited. It couldn't be—to Ruhl.

Q. When you say the "whole" transaction do you mean "the" transaction? A. The transaction, I mean, yes.

Q. Wasn't entered on your books at all?

12388 A. No.

Q. Now, as you look back on the situation, were you aware of this transaction happening in 1943? A. No, couldn't, of course, remember such a transaction. Otherwise I would have told you. But that seems how it has happened.

Q. Were you aware of any transaction going through your books or being submitted to you or your firm during the war involving these so-called Japanmarks? A. No. As far as I could check, that seems to be the only occasion where such a transaction was tried, offered, and not even carried through concerning Japanmarks.

Q. What was the effect of this transaction from a bank

ing point of view, Doctor? And by that I mean did you receive Japanmarks or what did you receive in the Ruhl instance we are now talking about? A. According to my information, we just got from the Laenderbank the information that there were at our disposal for Ruhl these 10,200-and-odd Far Eastern currency—means Japanmarks—and, as I told you, we didn't deal with them. This money was retransferred. I mean we didn't convert it into Swiss francs or didn't do anything else with it but retransfer it.

Q. Now, the remittance came to you or the credit came to you via Laenderbank?

12389 A. Yes.

Q. Did it go back the same way? A. It went back. We requested Laenderbank to retransfer it as we had been requested to—I think it was German Bank for East Asia, Deutsch Asiatische Bank.

Q. And you had no account with Ruhl expressed in Japanmarks at any time? A. No. I remember—I mean I remember from this information I got now from checking—that shortly before there we were credited by Laenderbank for account of Ruhl with the amount of I believe 1400 Marks. These were Frei-Marks. And these were converted into Swiss francs and credited to his account.

Q. That has nothing to do with the transaction we have been expressing in Japanmarks? A. No, no. That's quite independent. A small transaction.

Q. And those 1400 free Marks comprised part of the turnover that you have— A. Yes.

Q. —that you have testified to a few moments ago? A. Yes, that's my information.

* * *

12396 Q. Mr. Sturzenegger, on page [R. 11860], you were asked about so-called Farben letters passing through you to Ahrens or from Ahrens by Mr. Schwartz, and you answered:

"Cannot recollect that. I really cannot exclude that.

"Q. You couldn't deny there were Farben letters?

"A. No, couldn't deny it."

Are you in any better position with respect to that point today? A. Well, to the best of my knowledge there were not. I mean, I haven't opened the letters which are still in the office, so I cannot make an absolute statement.

Q. Now, on page [R. 11862], Mr. Schwartz asked:

"Q. And you can't recollect Stockholm and Zurich? Am I right?

"A. No, I can't recollect. I do not exclude them."

You remember this morning's testimony with respect to the unopened letters in that respect.

At the bottom of page [R. 11863] the following occurred:

"Q. You passed letters from Auer to Farben and back. We have been over that.

"A. We have been over that. We have—" and he was interrupted.

"Q. Yes. And you passed these letters from someone to someone for Ahrens. I'm just summing them up for a moment.

12397 Whose other letters did you pass during the war?

"A. I do not recollect.

"Q. Will you deny that there were others?

"A. No, do not deny it."

What is your best recollection, Mr. Sturzenegger, upon reflection, as to how you would today answer that question of Mr. Schwartz? A. Why, it is the same, to my knowledge, we didn't. I mean, I cannot deny it absolutely, but I don't think—I cannot remember an occasion.

Q. You have learned nothing in Switzerland which would have changed your answer? A. No.

Q. Now, on page [R. 11865], the following occurred, and I am sure it has to do with the question of whether anybody stopped by to pick up letters. I will pick the questions up in the center of the page, [R. 11865].

"Q. Do you know, as the possibilities of who came to you, whether that man was a member of Ahrens or a member of Farben?

"A. No, because I do not recollect the name and the occasion.

"Q. I see. Did he come to your firm or did your firm carry them to him?

"A. I think he came, but I am not certain. Well, if

12398 that's all of interest, I must inquire into the details, because I have not handled such matters and therefore I am not acquainted."

Mr. Sturzenegger, does that come under your previous answer— A. Yes.

Q. —excluding the possibility of a courier? A. Yes, that excludes it.

Q. Or passer-by? A. I rely on the statements of my staff because I didn't handle it personally, and they have confirmed to me they feel absolutely certain nobody came, and there were no letters handed to somebody passing by for Ahrens.

Q. Now, this further followed in that connection. At the bottom of page [R. 11865] and going to the center of page [R. 11866], Mr. Schwartz says:

"It wasn't the German Consul that you took the letters to?

"A. No.

"Q. You can deny that?

"A. I deny that because I think that would have been reported to me.

"Q. But you don't know that it wasn't so since you don't know who it was?

"A. Well, I have all certainty to assume that it was not to him. I mean I feel pretty sure.

12399 "Q. Will you deny it unqualifiedly? Will you?

"A. No, to the best of my knowledge it was not the case.

"Q. But you couldn't deny it unqualifiedly?

"A. No."

A. Well, I can deny it, really.

Q. Sir? A. I can deny it, really.

Q. Unqualifiedly? A. Yes.

THE MASTER: That is [R. 11866]?

MR. WILSON: It is [R. 11865] and [R. 11866]. I picked it up on the last line of page [R. 11865].

BY MR. WILSON:

Q. On page [R. 11879] the following occurred at the lower portion of the page:

"Q. Are you definite that you did not get a request from a commercial company, a telegraph company, for—" and you interrupted Mr. Schwartz.

"A. To the best of my recollection I cannot recollect.

"Q. Are you definite you did not furnish a copy of this code to anybody else except Schweizerische Kreditanstalt?

"A. That's the best of my recollection."

Now, perhaps I didn't start early enough, but you may remember that the earlier questions—and I find them on this

12400 page—had to do with whether coded cables were disclosed to commercial carriers, and by "commercial carriers" Mr. Schwartz meant "telegraph company." A. Yes, I have checked that, too, in Basle.

Q. What do you find the situation to be? A. Well, we have complied, of course, completely with the Swiss requirements and instructions and prescriptions in this matter, and it seems that copies of codes had to be delivered and have been delivered to the telegraphic company. And in addition to that, from a certain moment during the war there was the prescription that a translation of every incoming and outgoing code telegram had to be delivered to the telegraph company, and that we did.

Q. Was that a governmental requirement— A. Yes.

Q. —or a telegraphic company requirement? A. No, governmental requirement.

Q. And that was a Swiss governmental requirement? A. Sure.

Q. Again with respect to the general subject of letters being passed by hand, I refer to pages [R. 11888] and [R. 11889]. Mr. Schwartz, I think, had asked you about two kinds of letters, your own communications or the communications of others to Ahrens. Now, I don't know that my questions have been that broad and I would like to make them that broad. Is your

12401 recollection about it, and your information about the fact that letters were not so passed by hand—does that embrace both your letters and letters of others? A. Yes, sir.

Q. Now, specifically, on pages [R. 11888] and [R. 11889] the following occurred:

"Q. Now, you have said, have you not, that some letters that came to you for Ahrens——

"A. Yes.

"Q. —went by courier or person, if you don't like the word 'courier.' Somebody came by and took them.

"A. Yes.

"Q. Right. Now, did somebody ever come by and take any letters that you yourself wrote to Ahrens? I mean your firm?

"A. That I cannot recollect because I do not recollect specific request. If Ahrens has, that must be in documents, has requested us, 'Hold everything back, letters for us and your correspondence for us, until somebody, this or this gentleman, turns up. Give it to him,' then I think we would have handled it this way. I cannot recollect such an occasion.

"Q. But you're pretty sure—Can you be pretty sure that you didn't give your own letters to Ahrens to a courier to take?

"A. I feel pretty sure, but I am not absolutely certain.

"Q. All right.

12402 "A. I mean it would have depended on the request, and I cannot recollect now such.

"Q. I see. Then you couldn't deny——

"A. No."

That is to say, Mr. Schwartz' question was interrupted by your answering, "No," and Mr. Schwartz continued:

"Q. —that your own letters to Ahrens went by courier to Ahrer?

"A. No, not with absolute certainty.

"Q. Would you like to reconsider your testimony that they went by mail at all?

"A. No. I mean it's impossible for me to make an exact statement whether now only that or only that occurred. I think it was both ways, and it was according to the instructions. But I do not recollect now how the instructions were for this time and how they——"

And Mr. Schwartz interrupted you:

"Q. Well, was there ever a period of time in which your own letters to Ahrens, these that we see here,——"

And you interrupted with:

"A. Yes."

And Mr. Schwartz continued:

"Q. —went by other than mail? Went by person?

"A. To the best of my recollection not, but I'm not absolutely sure."

12403 Now, the answers that you gave to an explanation of similar observations this morning, Mr. Stürzenegger— A. Yes, I recall.

Q. —would be the same? A. Yes, I mean, I refer to the statements in answering your previous questioning——

Q. Yes, sir. A. —that my recent information is that something like that was not done.

Q. Yes, sir. On page [R. 11890], Mr. Schwartz had before him No. 313 in the so-called Japanese folder, I believe, at the time he asked this question:

"Q. Now, you notice in responding to this, although the cable had not mentioned other correspondence, in 313 you said; 'The correspondence received for you is being kept by us at your disposal.'

"A. Yes, I see it.

"Q. Does that mean your firm always distinguished between the correspondence that you were sending to Ahrens and the correspondence received for Ahrens?

"A. Well, I did not handle these matters personally, and I therefore have no exact recollection."

You would now dispose of that line of inquiry similarly to answers which you have given me this morning? A. Yes, sir.

12404 Q. Regarding similar statements? A. Yes, sure.

Q. At the bottom of page [R. 11891] and the top of page [R. 11892], the following occurred. Mr. Schwartz said:

"You notice there is a reference to correspondence received by Sturzenegger for Ahrens, and then in parentheses 'Zurich and Stockholm.'"

You answered, "Yes."

"Q. Now, does that help you to remember anything about the kind of correspondence received?

"A. I have no idea. You mentioned already in questioning me Zurich and Stockholm. I didn't remember that. Really I cannot remember from where correspondence for Ahrens arrived at our office. I remember independently only these letters from England."

Mr. Sturzenegger, the letters from England are the Schroeder letters that you referred to before? A. Yes, that is it.

Q. And when did you first learn that there were retained

in your firm some 59 or 60 letters for Ahrens coming from Zurich and Stockholm? A. During my recent stay in Basle when I inquired into the matter.

Q. And you did not know that fact when you testified on April 25, 1950?

12405 A. No, I didn't know it, of course.

Q. Now that you have been acquainted with that fact, does it quicken your memory at all as to whether you knew of the existence of the fact contemporaneously with the postmarkings or approximately the postmarkings on the letters? A. I mean I couldn't remember that independently.

Q. Yes, sir. On page [R. 11894] you were asked:

"Q. Are you pretty definite—can you be pretty definite—they were letters addressed to the firm, and from the body of them the reader could tell they were to go on to Ahrens?

"A. No, I have really no recollection, and it's impossible for me to make a statement."

Now, what is your qualification or elaboration or explanation today? A. Well, the qualification is that according to my recent information, these letters were addressed to Ahrens, care of Sturzenegger and Company.

Q. Mr. Sturzenegger, on page [R. 11901] you were asked about Balthaser. You said you remembered the name. Mr. Schwartz asked you further who he was, and you said:

"That may be one that has an account with us or had an account. I'm not sure."

Now, is your testimony regarding Balthaser this morning the extent of the new information which you have gotten with

12406 regard to Balthaser?

A. Yes.

12430 REDIRECT EXAMINATION (Resumed)

THE MASTER: Mr. Schwartz?

MR. SCHWARTZ: Yes, sir, I have a very few things. First,
12431 this is really a note for the record, gentlemen, because I am sure if, as I think, that Mr. Sturzenegger has made a mistake, you will rectify it.

Yesterday at transcript [R. 12340-12342] Mr. Wilson was inquiring about the number of Chemie shares which passed on the exchange of Chemie shares in cash for the Visca shares and the Industriebank shares, and Mr. Sturzenegger said—that is of Visca—my point about it is he said about 1750 or 1780 of the total of 5,000 Industriebank shares were those that were exchanged for Chemie shares. I think if you will reconsider, Mr. Sturzenegger, you will probably find there were only 3,000 Industriebank shares.

THE WITNESS: Yes, that's correct. Thank you.

MR. SCHWARTZ: That is as shown in the SCO second, page 15.

THE WITNESS: Yes.

MR. SCHWARTZ: And which you confirmed in your prior testimony, page [R. 11424-11433].

MR. WILSON: Industriebank shares eventually became——

MR. SCHWARTZ: 5,000. When Mr. Grentert's firm took over the capital increase.

THE WITNESS: Yes.

12461 Q. I assume—and I don't think this is the objectionable one—I assume that on the list that you took home as matters of mutual interest to you and Mr. Wilson was this
12462 Japanese matter generally—or this Japanese matter. A. Well, Mr. Wilson thought that and asked me to check these Japanese matters. That's correct.

Q. Was it a specification as to parts of the Japanese matter? A. No.

Q. —or merely the Japanese matter? A. Japanese matter, including the whole and whatever you touched and——

Q. I mean there was a general statement? A. That's correct.

Q. That item on the list, whatever it was? And so you checked it generally I assume? A. Yes.

Q. In your general checking of the Japanese matter, did you learn any more than you were able to tell us before of what the business of Ahrens and Company was? A. No, didn't learn any more.

Q. You didn't learn anything of whether it dealt with tin, wolfram, shellac, rubber,— A. No.

Q. —silver? A. I told you we didn't know that.

Q. I just wanted to know what more you learned. A. I see.

12463 Q. We needn't go over that. You didn't learn anything of what its relations with Farben were? A. No.

Q. Other than it was a close business connection? A. Yes.

Q. Did you find any correspondence between you and Farben about Ahrens or a connection with Ahrens? A. No, no. I mean—to make it clear—I haven't checked that all myself. I asked my staff to go into it, put some questions.

Q. What did you ask them? Did you specify matters to them, or did you want general information? A. Well, I would say general information, but especially with respect to the points that were raised by you.

Q. Certainly one of them was what you could tell us about the nature of Ahrens' business? A. Yes.

Q. Did you ask for information about that? A. I cannot remember that I put just this question, but how should anybody beyond myself know more about that? I mean Werder had just knew that it was a banking connection and that's all.

Q. If you remember—do you remember whether you

asked about that or not? A. I said, "Check our business connection with Ahrens."

12463-A Q. Just like that? A. "And check specifically what was done there, the mail and so on, how that went." And, well, I think these questions that were raised then by Mr. Wilson in the cross that related to your questioning.

Q. That means, I suppose, that you asked, "Did we ever give a copy of the code to a telegraph company"? A. Yes, this too.

Q. Did you ask about the code? A. Yes.

Q. Did you ask what kind of code it was? A. Yes, too.

Q. Did you ask whether it had any such private words as you thought when you were here last it had? A. Well, it was, as I was informed, a private code, as I supposed, that was sent to us sometime by Ahrens.

Q. Do you still have it, did you find out? A. That I haven't checked. I mean I asked what did we send to Zurich. It appears we have ent that.

Q. Let's keep to one thing at a time. Did you ask whether the code was still there? A. No.

Q. So you don't know that it still is there? A. No.

Q. Did you ask whether it had ever been sent to any-

12464 body? A. Yes.

Q. What was the answer? A. Yes. It was sent to Zurich, according to the wish expressed by Ahrens in 1943.

Q. As the correspondence in those books showed? A. Yes.

Q. Did you ask whether it had been sent back to Ahrens or someone else and disposed of finally, the last copy? A. No, I don't think that this question was put before me, so I had no reason to ask them.

Q. But you didn't ask whether it was still in the premises and you didn't ask whether it had left the premises? A. No, I didn't ask that specifically.

Q. Were you told, nevertheless? A. No.

Q. But you were told that it contained such private words known only to the two people at each end? A. Well, I do not know to whom whatever else this private code is known. I mean——

Q. As far as you know. A. I mean that is a private code that Ahrens sent to us, and as it was a printed matter probably Ahrens used it in other connections too, but it's a conclusion.

Q. I'm talking of that particular part of it that you

12465 said were amendments or additions to the printed code of words that were designed to be known only to the two people at ~~each~~ end. A. No, I was speaking just generally of the private code sent us by Ahrens.

Q. You didn't ask whether it contained in writing certain inserts and amendments that were particularly private? A. No.

Q. Well, did you not ask because, having said so, you were pretty sure that it was so? A. No, because I was satisfied with the answer. "What kind of code did we use with Ahrens?" And I got the answer, "A private code was sent to us"—I think in '41 or whenever it was, that was used during a certain time and then I think even that was dropped and just open cables were exchanged.

* * *

12468 Q. On reading your testimony on codes of yesterday, I

12469 see that it really covers only two pages, and that all you said was——

MR. WILSON: What page?

MR. SCHWARTZ: [R. 12399] and [R. 12400].

BY MR. SCHWARTZ:

Q. All you said was you have checked about whether coded cables were given to the telegraph company. A. Yes.

Q. You found that you had completely complied with Swiss requirements. And it seems that copies of codes had to be delivered and have been delivered to the telegraphic agency, and, in addition to that, from a certain moment during the war there was the prescription that a translation of every incoming and outgoing code telegram had to be delivered to the telegraph company, and that "we did." A. Yes.

Q. And it was a governmental requirement. So that's— A. Yes.

Q. That's all you learned about codes in Switzerland? That you furnished the code to the telegraph company; that when they required it you furnished a decoding with the message; and that was a governmental requirement. A. Yes.

Q. You learned nothing else? A. I mean and—what I told you before—confirmation

12470 that we sent a copy of the code, special code with Ahrens, upon the request in '43 to the Kreditanstalt.

Q. On that you saw your signed letter here when you were here last. A. Yes, but I checked it.

Q. You checked it? A. It has been done.

Q. You didn't check as to that Table 4 business which you also saw in here? A. No, but I mean asking Mr. Sutter, for instance, who had a recollection about it.

Q. You asked him what? A. Well, did we send it? I informed him about the questions that came up, and I wanted him to check that.

Q. Well, you had seen your signed letter that you sent. I don't see the point of asking him about that. A. Well, it was just one of the questions that had to be——

Q. There you were asking about something that you had seen in a letter. You had also seen in a letter changes you made on Table 4 of the code. Did you ask him about that? A. I didn't ask him that specifically.

Q. Who was it you did ask about this code matter? A. Sutter.

Q. Sutter?

12471 A. Yes.

Q. Not Werder? A. No. Both gentlemen were present when we discussed it.

Q. So you asked both of them about this? A. Yes.

Q. And they both got all your requests about this Japanese matter? I mean you didn't ask some some things and the other the other? A. Well, I mean, for instance, if there was a question about when an account was opened, how great was the turnover,—I refer to the statement about Ruhl—that is, of course, more in the line of Mr. Werder as in charge of bookkeeping matters.

Q. It was his business to give you the answer? A. Yes.

Q. But both of them were present when you made all your requests? Right? A. Maybe one went away and looked into a matter. I cannot say that all were at the same time always present. But both were informed.

Q. You had several conversations with both of them? A. Yes.

Q. Several conversations? A. Yes.

12472 Q. Now, we got onto this as an illustration of a specific thing you might have asked them. We were talking about what you learned from them generally about the business of Ahrens. You said "nothing." They didn't come back and tell you that Ahrens was thus and thus, and Ahrens did this kind of business with us? And did they tell you anything about the business Ahrens did with you? A. Well, I mean they didn't tell me of any remittances or any movement of the account which we have not seen already reflected here in the books that you showed me, but I do not remember that there was a specific question of interest to you in this connection.

Q. Did they tell you anything of the business of Ahrens with your firm? A. Well, they confirmed that once bank notes had been on deposit and so on, but that we have seen here. It's nothing new.

Q. Well, surely you told them that you were unable to say what kind of business Ahrens did and who owned it

and that you didn't even know who were the partners? A. Yes.

Q. You made it clear to them, didn't you, that your information on Ahrens while you were in the United States was hardly comprehensive? A. Of course I didn't know more. I mean.

12473 Q. Let's leave the "of course" out for a moment. Let's get to that in time. You made it clear to them that you hadn't known a terrible lot about Ahrens when you were here? A. I think so.

Q. Did they come back to you or spontaneously tell you some things about the business of Ahrens? A. No. I mean the business they checked as it is reflected in our files, and that means it covers the correspondence we had with Ahrens as client. And remittances and turnover and so on. I cannot remember now in this connection any specific question I asked or was informed about except what was generally mentioned here.

Q. Well, in that general discussion of Ahrens on the information you were looking for, you didn't learn then anything of the nature of Ahrens— A. No.

Q. —or its relations with Farben— A. No.

Q. —that you didn't know before? A. No.

Q. But they told you all about Balthaser, because you mentioned that yesterday. A. That's correct.

Q. They told you who were the four customers you had there—Ahrens, Bosch, Schreck and Ruhl?

12474 A. That's correct.

Q. They confirmed to you that you got remittances from Senryo and perhaps other people such— A. But not that—we had no direct business connections with other firms or banks. That's a negative statement too.

Q. They told you about your customers in Shanghai? A. (Witness nodded affirmatively.)

Q. Krauch? Did they tell you or did you know those were Farben-connected outfits, those Shanghai things? A. Well, I think the name already indicates that.

Q. Krauch was a leader in Farben, was he not? A. Well, it was Deutsche Farben-Handel A. G. It all indicates they are connected with Farben.

Q. Those Shanghai German-named outfits were customers, were they not? We got onto those on the question of other customers in the Far East. A. These two companies mentioned to you were customers and some other persons: Balthaser, Laur I mentioned.

Q. They were Farben-connected? A. I mean about the individuals I do not know.

Q. What individuals are you thinking of? A. Well, these I mentioned. A Mr. Rommelfanger; I have no idea what he was.

Q. Was he connected with one of those firms that you did mention?

12475 A. That I do not know.

Q. You don't know? A. May be the case. I don't know.

Q. Well, of all your customers in the Far East, how many of them do you know were connected with Farben and how many do you have no information on? Let's take it one by one. I suppose Ahrens, Bosch and Ruhl you would agree were connected with Farben in some way or another? A. Well, about the history of Ruhl, nothing——

Q. He was a partner in Ahrens? A. Yes.

Q. And Ahrens was connected with Ruhl? A. I mean it all depends whatever you understand on the "connection."

Q. All right. Let's take it simpler. Ahrens was certainly connected with Farben in a business way? A. Business way.

Q. Bosch was connected with Ahrens? A. Yes, sure.

Q. And he was also, you told us, a brother of the Bosch of Farben? A. As far as I know, yes.

Q. Schreck. Now, there, Mr. Wilson, I misspoke yesterday. You said about that Japanese document, "And

Schreck and Ruhl were the other partners?" I think
Schneider and Ruhl
12476 were the other partners.

MR. WILSON: Well, I misspoke. I'm sorry.

BY MR. SCHWARTZ:

Q. Schreck, Mr. Sturzenegger, what was he? Connected with whom? Do you know anything about his connections with anybody? A. No, do not know. May well be the case.

Q. He certainly was connected with Ahrens? A. Yes.

Q. Because I think all the payments to his account were by way of remittances— A. Lawyer, but that's all about I know of occupation or so.

Q. Balthaser. Do you say he was a client or merely a channel of communication with Ahrens? A. I believe he was. I believe he was in some way connected with this Krauch Gesellschaft in Shanghai.

Q. Oh. As well? A. And must have been connected with Ahrens, because he transmitted requests made by Ahrens.

* * *

12488 Q. Now, in the course of this statement on [R. 12382] you said they might have concerned just personal things such as "thanks for these gift parcels." Now, thanks would have been coming from Germany to Japan, wouldn't they? A. That's correct. So that must be misunderstanding. Probably an inquiry, "Have they arrived?" or so.

Q. Didn't you carefully, as we have seen, inform Ahrens as to what parcels had been delivered and which could not be delivered for lack of something or other? A. Well, that doesn't exclude that some relative is interested to know whether or not the person——

Q. Had received it? A. —had received it.

Q. But I'm suggesting they learned whether they had been received from you as a proper businesslike matter. You informed them when you couldn't get the parcel to

the person? A. Well, I don't think always, but we have seen documents, exchange of correspondence.

Q. You were spending this money to buy them and— A. —charging Ahrens' account on request.

Q. And the post office receipt was the customary ac-

12489 knowledgment of delivery? A. Yes.

Q. And when you didn't get that because the person wasn't in that city or the post wasn't running, you informed Ahrens? A. Yes.

Q. So, I am suggesting to you that it is very unlikely that such letters as came from Ahrens or Bosch and were forwarded had to do with inquiries as to whether the person in Germany had received the gift parcel. A. Well, it may have been they were greetings. I questioned Werder and that's all he could remember. He said, "I'm perfectly sure." And I wanted to make sure there was no business or nothing whatsoever, just maybe a personal inquiry of a personal sort. There were only very few letters. That's what I remembered when you asked me. Therefore, I made yesterday this statement.

Q. All right. Now, you referred twice to Mr. Werder's point of view on such letters. You said he said he wouldn't have handled commercial information. He opened them to see whether they handled commercial information. That was his attitude, was it? A. He told me so.

Q. Was it the formal attitude of the firm? A. I think so. Otherwise it would have been handled

12490 otherwise.

Q. Now, these 50 or 60 letters that you have, you didn't open those? A. No.

Q. Your attitude was not apparently then, as to letters coming from Europe to Japan, that you wouldn't handle commercial information? A. Well, they were not handled. As you remember, they are still in the office.

Q. Yes, but if the attitude was that you wouldn't handle commercial information and therefore you opened the let-

ters coming from Japan to Germany, why didn't you open the 50 or 60 that came from Germany that were supposed —that came from Stockholm and Zurich—sorry—that were supposed to go to Japan? A. Well, about the others I had no knowledge and no recollection whatever. Therefore, I just asked Werder. I mean I do not know even if they were just from Bosch, maybe, to Werder addressed. I do not know that.

Q. You said that Werder opened them? A. Yes.

Q. Because he said he opened them, because he wouldn't handle commercial information? A. That's what he said.

Q. We can agree, I'm sure, that means they were not

12491 addressed to Werder, because if they were addressed to Werder he would have opened them automatically without any such principles. A. I didn't inquire into those details.

MR. WILSON: They might have been addressed in care of him.

MR. SCHWARTZ: They might have contained cigar coupons.

MR. WILSON: No, no, that's an unfair——

BY MR. SCHWARTZ:

Q. Mr. Sturzenegger, you're clear, and on the basis of Mr. Werder's statement you can, with only the qualification that it is his statement, say that the 50 or 60 letters were not opened? A. Yes.

Q. Were there any other letters than that 50 or 60 that came to you from anywhere to go on to Japan? A. I do not recollect.

Q. You do not recollect? A. Yes, if there were others. I mean except those I mentioned before.

Q. The Schroeder letters in 1939? A. Yes.

Q. Those you forwarded? A. I believe so, because they are——

Q. But you don't recollect whether there were more than

12492 50 or 60? A. I had no independent recollection about the number, the figure, at all.

Q. Mr. Werder doesn't recollect either? A. He said might be, but then it struck me that, as I told you yesterday, that it appeared these letters covered, according to the stamping, the time from December——

Q. Yesterday you said November. A. December, November. My memory is only human, Mr. Schwartz.

MR. WILSON: What year, Mr. Sturzenegger?

THE WITNESS: 1941.

MR. WILSON: Up to what year?

THE WITNESS: Up to about 1945.

* * * *

12503 BY MR. SCHWARTZ:

Q. What was in your mind, Mr. Sturzenegger, that caused you between [R. 11856] and [R. 11858] to say as I have read to you that you thought there were occasions where they were sent normally posted and other occasions where somebody passed to take them and you gave it to them to take to Ahrens? A. Well, it had nothing to do with a general practice of my firm, and my explanation would be the following: I upon your questioning recollected that mail or correspondence for Ahrens was for a certain time withheld, and that's about all I had in mind then. And I had vaguely in mind too requests to forward maybe such mail. But I didn't know exactly. And you went on questioning me, and I was just asking me: Well, how was it now? It was apparently such correspondence, incoming correspondence, was withheld. May be it was then mailed.

12504 But I'm not perfectly sure that nobody passed by. And I just didn't want to make an absolute negative statement because I didn't feel sure. And so I—

another term—I didn't like to exclude the possibility. I said may be somebody passed by.

Then you questioned me further on. I rephrased it. And so on. That's my impression or recollection how it happened. And afterward now I have cleared the matter up in Basle, and I am convinced that such a thing didn't take place. I mean that it was not handled that way.

Q. Did you have in mind when you were making those statements—the ones I have read to you—that you had once given letters to Ahrens to somebody who had passed by? A. No.

Q. Didn't you say somewhere that Mr. Bosch had once passed by and picked up some letters? A. Yes, but then——

MR. WILSON: Wait. Wait. Now, you have answered that question "yes." My recollection of your testimony is that you said he passed by. And whether or not he picked up the letters was a question.

THE WITNESS: And I said, and if I recollect clearly, may be he passed, and he at this moment picked it up. But afterwards I have learned that he only came and passed by after the war. I wasn't sure at the moment.

12505 BY MR. SCHWARTZ:

Q. I see. Did you have in mind that anybody had ever passed by at any time to pick up letters? A. No. It was so, as I told you. I just—because I hadn't about the whole matter clear recollection—I didn't want to make an absolute negative statement.

Q. Is it your testimony that you have never at any time sent letters on to Ahrens by someone who passed by? A. Well, I refer to the statement I have made.

MR. WILSON: I think he's answered that to that effect.

THE MASTER: I think he answered it and said that that was his testimony.

MR. SCHWARTZ: That it never——

THE MASTER: Never had happened.

By Mr. Schwartz:

Q. At any time, Mr. Sturzenegger? Even long before? A. As far as I know, that's what I can say.

Q. I think you said you confirmed letters came from Schroeder and went onwards. Have you confirmed that? Well, let's take it step by step. You did confirm yesterday that letters from Schroeder in London came to you for Ahrens and you sent them on to Ahrens? A. I think——

Q. That was about '39 or '40. A. I think they were sent on, because they are no

12506 longer there. I think so.

Q. They are no longer there? You mean you don't have them? A. I mean in the premises of my firm, as different from the others.

Q. You mean that 1939 letters are no longer there? Certainly these 50 or 60 letters you have—what do they have on the outside? A printed return address? Are you able to tell from the outside of the envelope from whom they come in Zurich and Stockholm? A. Well, that I told you already I haven't seen. I'm sorry.

Q. Your people didn't tell you? A. I asked Werder to check the matter, and he told me what I mentioned.

Q. You didn't say yesterday anything about a printed return address on them. A. No, no, I said they were addressed care of.

Q. Were you informed as to whether there is anything on them except a postmark from Zurich or Stockholm? A. No, I wasn't informed.

Q. You weren't informed? I see. And you don't know whether there is or is not? Is that right? A. (Witness nodded affirmatively.)

Q. I see. So one of those could be from Schroeder

12507 mailed in Zurich or Stockholm?

Mr. Wilson: I object to the question.

Mr. Schwartz: All right. I just want to point out the possibility. It's not really a question.

BY MR. SCHWARTZ:

Q. Then how do you know that Schroeder letters are no longer there?

MR. WILSON: I think he referred to Schroeder letters in '39, and the first one of these letters is postmarked '41, Mr. Schwartz.

MR. SCHWARTZ: That's where I was going to.

BY MR. SCHWARTZ:

Q. Do you know the Schroeder letters are not there because you know there were Schroeder letters in '39 and—

A. That we have seen.

Q. —and all of these postmarks are '41? Is that it? A. They are from '41. That's one point where I deduct it. And the other is as I have told you. I have been informed that these letters, which are still with us, are either from Zurich or Stockholm.

Q. So you have no other source of knowledge of the fact that Schroeder letters went on? You don't have any record that you sent them on? A. Well, I haven't checked the whole correspondence. If I went through that at the time, maybe they were mentioned,

12508 but I don't think so. I do not know.

Q. Your people didn't inform you, for instance, that there is a copy of a letter that shows that you transmitted Schroeder letters? A. No, didn't tell me that.

Q. You don't know then by what manner the Schroeder letters went to Japan? A. Well, must have——

Q. You don't know whether by person who passed by or by post? A. No, I know that because——

Q. They told you? A. —I ascertained that nobody passed by to pick up letters.

* * *

12509 Q. Mr. Sturzenegger, I would like to turn to the problem of Mr. Ruhl and the Japanmark transactions or transaction. And do I understand rightly your yesterday's testimony was that at first—and this is about

August or September of 1943—you got credited to you from Ruhl via Laenderbank 10,000 and a small number of these Marks which are called Japanmarks and which mean Marks blocked in Germany which can be only used with respect to Japan? Is that right? A. Yes, that's what information I gave you yesterday.

Q. Now, was that in a communication from Mr. Ruhl or in a communication from Laenderbank or both? A. From Laenderbank.

Q. From Laenderbank? A. Yes.

Q. What did that say?

12510 A. Well, that I do not remember, as I have not seen this credit note. And therefore, yesterday I think I said I was not sure whether it was just a credit note or another information by phone or whatever it was we got from Laenderbank, but it was from Laenderbank.

Q. Well, it was more than just a deposit to his account of such Japanmarks? There was some problem of disposing of them? There was a request? A. No, it was——

Q. That you sell them, dispose of them, or convert them, or something, because that's what later came up as the problem—how they could be disposed of and where. A. No, I don't think it was so. I think it was—it was the information that Laenderbank had at our disposal for Ruhl this amount of these special Marks, blocked Marks, but how it was, this information, whether it was a credit note or another information, that I do not know.

Q. You didn't ask or you weren't told? A. I didn't ask. I asked more generally: Did we in connection with Ruhl or otherwise have something, transaction or a matter, that in a way is connected with Japanmarks? And that was the reaction.

Q. Well, you didn't mention Ruhl in asking? A. Yes, sure.

Q. You asked about Ruhl?

12511 A. Yes.

Q. Well, all right. A. Well, I made it even broader, after having inquired into the specific Ruhl matter

you were interested in. I asked them: Have we otherwise dealt with Japanmarks?: The answer was no.

Q. Let's stick to Ruhl for a moment. Anyway, this thing came in from Deutsche Laenderbank? A. Yes, that's my information.

Q. Do you know the date? A. I believe August.

Q. August? A. About the middle or little later.

Q. August 1943? A. That's '43; right.

Q. What is the next step? What happened next? A. Well, my information is that we then inquired with Ruhl.

Q. What did you inquire of Ruhl? A. Well, again I am not sure how exactly it was, but I think what to do, as we had, I think, previously ascertained that these were not free Marks as in the previous small payment which could be converted at the official rate into Swiss francs. I refer to these 1400 Marks which came in before. And then my information is that we got the reaction, as I told you

12512 yesterday, that this amount was to be retransferred —and I believe I was informed—to the German Bank for East Asia for Ruhl's account. The Deutsch-Asiatische Bank. And so to my information it was done.

Q. Well, you inquired what to do with these Marks? A. Probably, yes.

Q. Is the letter that you have seen here—Have you confirmed that that is your inquiry? Have you confirmed that Exhibit 382, which I show you there in the German text, was your inquiry? A. No, I haven't. I mean I haven't checked the files myself.

Q. Did you ask what was your inquiry? A. It was not exactly framed like that, the question. I think it was: What was done? And then I got the information, as I told you yesterday, that the sum had to be retransferred to this address.

Q. Now, you notice that refers to "yours of the 23rd," presumably a cable communication of the date before, from Ruhl or Ahrens to you. Have you inquired as to whether you had such a cable in your possession? A. I'm sorry,

I didn't. I mean I had not—When I inquired into the whole matter I had not in mind this telegram copy you showed me.

Q. You remember that when you sat here the last day

12513 of direct you asked me if I had— A. Yes.

Q. —the cable of the 23rd. A. Yes. I remember that.

Q. And I replied, "Not right here today." A. That's correct.

Q. Then you didn't inquire in your own premises as to whether you had that or such a cable? A. No.

Q. Do you remember that about two or three days ago, last Monday I think it was, and for the record it was transcript [R. 12195] Mr. Wilson inquired of me whether I had it? A. Yes, I remember that.

Q. I see. A. And you said "no."

Q. That's right. I said I had intended by my statement that it was "not right here now anyhow" that we didn't have it in this country. A. I recollect that.

Q. Not that we didn't have it elsewhere. You weren't curious at all about whether you had gotten a cable from Ruhl? A. I didn't inquire exactly in this way. I did it in the way I said to you: "Is there any transaction about this time or any other time with Ruhl? And check what has been done."

12514 And that's the information I got.

Q. This inquiry of what to do that you made was an inquiry to Ruhl directly? A. Ruhl and Ahrens. I mean, as I told you, it went further. I said: "Well, about these Japanmarks about which the people in Washington are interested, I should know exactly how we dealt with them. What could be such an occasion? Please check that and tell me what."

Q. Then there were three steps? First, inquiry or notice of some kind from Laenderbank? A. That is my information.

Q. Then an inquiry by you of Ruhl? A. Yes.

Q. Then a response by Ruhl? A. (Witness nodded affirmatively.)

Q. Presumably? A. I think so.

Q. Are you confirming that? A. I think so. Must be.

Q. Then you retransferred it to the German Bank for Asia? A. Yes.

Q. At Ruhl's request? A. Yes.

MR. WILSON: One amendment I think. Via Laenderbank.

12515 THE WITNESS: Yes, of course, because I mean that is, I thought so, because this money came in or was announced by Laenderbank so couldn't have been handled——

BY MR. SCHWARTZ:

Q. Do you remember what Mr. Ruhl's response was that caused you to take the next step? A. No, but I think it must have been this to retransfer it to this German Bank of East Asia.

Q. What had you said to him in your inquiry that, as you put it, was merely a request what to do with the money? A. Well, I told you I haven't seen the cable. I couldn't make a statement. It would be speculation.

Q. You haven't seen the incoming advice from Laenderbank? A. No.

Q. And you haven't seen the response from him? A. No. All that I haven't checked myself.

Q. You haven't seen the document or the advice or whatever it is that was the retransfer via Laenderbank? A. No, I haven't seen that—these documents—personally.

Q. Do you know anything more about the transaction than you have just now been telling us? A. No. I mean I think I covered all. I know that too it is not reflected in the account of Ruhl. So that means

12516 it hasn't been credited and debited again. That I was told.

Q. Why was it not reflected in the account? A. Probably

because we didn't know what to do with this announced money and expected first his reaction. But that's speculation.

Q. You said that you got it from Laenderbank to Ruhl's credit, didn't you? A. For account of Ruhl.

Q. Well, don't you credit your customers when you get money for their credit? A. Well, but it depends what we can do. He, you remember—it was stated he had an account in Swiss francs. but this was neither free Reichsmarks, which is the equivalent to Swiss francs—I mean can be converted to Swiss francs at once—nor was it Swiss francs. And that is probably why we had to inquire what to do with it.

Q. Don't you always credit your customers in whatever currency they send you remittances? A. Not always. I mean if they have just one account, there is no rule. I mean——

Q. There was no "rule"? That's pretty good. A. I mean it was obviously in a currency that we couldn't convert without having had further instructions.

Q. Now, then, how was this reflected, if you learned? It was not in the books? Right?

12517 A. No.

Q. Where was it? A. Well, it must be in this exchange of cables with credit advice or whatever it was from Laenderbank, but I must tell you I cannot make as to the wording of those communications exact statements, as I have not personally seen these and checked this correspondence.

Q. Now, this retransfer to the German Bank of East Asia for Ruhl through Laenderbank— A. Yes.

Q. —could you be more specific on that? A. No.

Q. It wasn't by any chance a sale of these things to Laenderbank? A. No. It was really a retransfer. So I was informed.

Q. What do you mean by "retransfer"? Did Ruhl direct you to transfer it to Laenderbank? A. Yes. Otherwise we wouldn't have got it through Laenderbank.

Q. Do you know whether he said "for my account"? A. All that I cannot remember as I haven't seen the document.

Q. Who was it who it appears or did it appear handled this matter at the time it happened? A. Well, very probably Werder.

12518 Q. Who was it who reported to you on this last occasion as to what happened? A. Now? When I was in Switzerland?

Q. Yes. A. Yes, Werder.

Q. Do you remember on January 10th you told us something of what you had learned about Ruhl and Japanmarks —the second day of the resumed deposition here? A. I think so. I do not remember the date.

Q. And I think later when the Japanese documents came in you said that the member of the staff you had talked to and on whose information you gave us that statement of January 10th was Werder. A. Yes.

Mr. Schwartz: Your Honor, I hesitate to be raking this up time and time again, but there is now a fourth development in the giving of information on this thing, and I think it would be significant—I hope it will be significant—to retrace the steps.

At [R. 8032] Mr. Sturzenegger, we reminded you of the fact that in February we showed you a memorandum of a telephone conversation which mentioned Mr. Ruhl and Japanmarks. It was, in fact, Exhibit 15, but we didn't mention it there. I said: "Do you remember that, Mr. Sturzenegger?"

You said, "Yes, I remember."

12519 I said, "At the time you could tell us nothing about Japanmarks or Mr. Ruhl."

Answer: "Yes."

Question: "Have you learned anything since?"

Answer: "I have talked to one of my staff in order to inform me because I didn't know anything. The name, as I told you in February, didn't tell me anything. And

all I have got now is that he, too,—he couldn't make much out of it. The name seemed somewhat known to him, that is all. We, as I have been informed, didn't deal with him."

Question: "Didn't what?"

Answer: "Didn't deal with him. That is the best of my information."

Question: "You didn't, for instance, make any loans to him in Japanmarks?"

Answer: "No."

Question: "You know nothing about him except——"

Answer: "No, not to my knowledge."

Question: "—that his name was slightly familiar to a member of your staff?"

Answer: "yes."

Now, you have confirmed you were talking there of Mr. Werder. A. Yes.

Q. When you said you had talked to a member of your

12520 staff. And here you said that after your talk with Mr. Werder you were informed of only one thing—that he couldn't make much out of it—which covers Japanmarks or Ruhl or both; that you have been informed you didn't deal with him—meaning Ruhl. And then you said— A. Well, I'm, not—excuse me—I'm not sure whether I said—whether I meant "it," Ruhl or Japanmarks.

Q. You said it twice. You said first: "We, as I have been informed, didn't deal with him." A. I see.

Q. I said: "Didn't what?"

You said: "Didn't deal with him. That is the best of my information."

Thirdly, you summed it up by saying or agreeing that you knew nothing about his name except it was slightly familiar to a member of your staff.

Now, let's take those up one by one. Mr. Werder couldn't make much of it. Now, Mr. Werder made more of it later on, didn't he? A. Well, because I went further in the

matter and said, "Well, that's not sufficient. I must know more. Please check it."

Q. Two, that you didn't deal with Mr. Ruhl. The fact is you did deal with Mr. Ruhl? A. Well, deal not in Japanmarks. That was not a deal

12521 in Japanmarks.

Q. You did deal with Mr. Ruhl? A. Yes.

Q. Right. A. Yes, but I didn't recollect that he had an account.

Q. All right. And thirdly, you now know a good deal more about him and Mr. Werder knows now a good deal more about him than that his name is slightly familiar to a member of your staff, meaning Werder? Right? A. Yes. Well, I mean I know now what I have told you after I have returned to Switzerland.

Q. You know what I suggested to you, what we showed you here in these documents.

MR. WILSON: Not at all.

THE WITNESS: Not at all. That he was a client. That his turnover was just a ridiculous one, and the account the same.

BY MR. SCHWARTZ:

Q. Did you learn anything while you were in Switzerland, Mr. Sturzenegger, of what contact you had with Laenderbank about this? A. No, except what I told you already. There must have been.

Q. Did you learn anything to confirm that you had a telephone conversation with Mr. Moser about Ruhl and Japanmarks

12522 as indicated in our Exhibit 15? A. I didn't learn that. I mean if the internal memorandum of Moser is right, which I simply cannot recollect it, and of course other members of the staff can neither recollect it if it was really a telephone with me, but the whole matter is so absolutely unsignificant, why should I possibly remember such a telephone call? I really didn't and do not.

Q. Do you remember Exhibit 15 said in the second paragraph, signed by Moser: "I also asked Dr. Sturzenegger to see to it that in the Ruhl matter the Japanmarks transferred to him by Mr. Ruhl are not offered to outside persons. Dr. Sturzenegger promised to inform me immediately if such an order should come from Mr. Ruhl."

MR. WILSON: What's the date of that?

MR. SCHWARTZ: September 14, 1943.

BY MR. SCHWARTZ:

Q. Did you learn anything as to whether the conversation purported to be discussed in this memorandum related to the cables of August 23, 24, 1943? A. No. How could I?

Q. Did you learn that they related to another transaction in Japanmarks? A. No, didn't learn anything about it.

Q. Did you learn as to whether you made a promise and

12523 performed a promise not to offer Mr. Ruhl's Japanmarks to outside persons? A. Certainly not. How could I know that?

Q. I suggest to you that you learned that you in fact made such a promise and performed such a promise and that you sold them to Deutsche Laenderbank pursuant to your promise. A. That's not my information.

Q. You didn't learn that? A. No.

Q. While you say you did not ask for the correspondence with Mr. Ruhl, did you learn that there is any correspondence about this Ruhl matter in your firm? A. No. I just asked Werder about the matter itself and got the information and to the best of my knowledge and information gave it to you.

Q. Did he say that it was based on documents or on his memory? A. He didn't say neither.

Q. Didn't say? A. Just said the result.

Q. Did you know any of this that we have now been talking about and that we have seen in these documents

and that you have learned since on January 10th when you said as I have read to you? A. No. This information I gave you now I have learned

12524 in the meantime in Basle.

Q. You had no knowledge of it then? A. No

Q. May I suggest to you that you had knowledge of it but that since the day before you had said you were not going to show your records to us that you withheld it deliberately? A. No.

Q. You didn't do that? A. No.

* * * * *

12526 Washington, D. C.
May 31, 1950

The taking of the deposition of HANS STURZENEGGER, the witness herein, was resumed before Special Master William J. Hughes, Jr., at 2:30 p. m., at Room 670, 101 Indiana Avenue, Northwest, Washington, D. C. . . .

* * * * *

12552 (Thereupon, at 2:45 p. m., the deposition of HANS STURZENEGGER in the above-entitled matter was concluded.)